

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	Civil Action
)	No. 1:07-cv-12064-PBS
vs.)	March 18, 2011
)	Non-Jury Trial
)	Day III
TODD CARTA,)	9:20 a.m.
)	
Respondent.)	

BEFORE: THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

John Joseph Moakley United States Courthouse
1 Courthouse Way, Courtroom No. 19
Boston, MA 02210

Helana E. Kline, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
1 Courthouse Way, Room 5209
Boston, MA 02210

APPEARANCES:

For the Petitioner:

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I N D E X

Witnesses called on behalf of the Respondent:

Testimony of:

ROBERT ALAN PRENTKY, Ph.D.

Direct Cross Redirect Recross

By Mr. Gold 7

By Ms. Serafyn 103

E X H I B I T S

Respondent's

In Evidence:

No.	Description	Page
34	Report of Robert A. Prentky, Ph.D.	15
35	Robert A. Prentky, Ph.D., Curriculum Vitae.	15
36	PDS Note dated January 11, 2006, from Mr. Wood Bates No. C00407.	51

Respondent's

For Identification:

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1 P R O C E E D I N G S

2 THE CLERK: All rise. The United States District
3 Court is now in session.

4 THE COURT: All right. Good morning. Mr. Gold?
5 Oh, there he is. Mr. Carta, there he is. I just wanted to
6 mention just off the record for one minute.

7 (Whereupon, a brief discussion
8 commenced off the record.)

9 THE CLERK: Be seated. The court calls Civil
10 Action 07-12064, United States versus Todd Carta, Bench
11 Trial, Day Three.

12 Can counsel please identify themselves for the record?

13 MS. PIEMONTE-STACEY: Eve A. Piemonte-Stacey for the
14 United States.

15 MS. SERAFYN: Jennifer Serafyn for the United
16 States.

17 MR. GOLD: Good morning, your Honor. Ian Gold on
18 behalf of Todd Carta. Your Honor, the government rested, I
19 think, at the conclusion of the evidence in December. The
20 respondent would seek now to call Dr. Robert Prentky.

21 THE COURT: Fine. Thank you. Welcome back,
22 Dr. Prentky.

23 THE CLERK: You can take a seat over here, and I'll
24 swear you in.

25 THE COURT: No, you have all your stuff there.

1 THE WITNESS: Should I move it?

2 THE COURT: Yes, the mic and everything's over
3 there; we also have a screen over there so just move
4 everything there.

5 As he's going over there, it's been a very long time
6 because, as you remember, Mr. Carta canceled the hearings
7 in December and so I forget what the issue was but we had a
8 list of hearings and he didn't feel well, and you all had
9 scheduling problems so it's been three months.

10 So what have we done so far in this case. Who's
11 testified?

12 MS. SERAFYN: Dr. Phenix, Dr. Amy Phenix, testified
13 on behalf of the United States, your Honor.

14 THE COURT: That's all that's happened in this case?

15 MS. SERAFYN: Yes.

16 THE COURT: All right. Thank you, and what are our
17 plans for the next few days?

18 MR. GOLD: Well, your Honor, just for clarity sake,
19 we have agreed that the record we were briefing is part of
20 the evidence in the case; the record from the February 2009
21 trial.

22 Now, the respondent is presenting evidence from two
23 examiners: Dr. Prentky, who's the defense-selected
24 court-appointed examiner; there is also the original
25 court-appointed examiner who was also nominated by the

1 defense but selected by Judge Tauro, and he will be
2 testifying; that's Dr. Leonard Bard. He'll be testifying on
3 Monday --

4 THE COURT: Okay.

5 MR. GOLD: -- and Tuesday.

6 THE COURT: Okay. And, Dr. Prentky, just I'm losing
7 track because I have so many of these cases, you testified
8 before me on which case?

9 THE WITNESS: Previously with Mr. Wetmore.

10 THE COURT: Mr. Wetmore?

11 THE WITNESS: Correct.

12 THE COURT: And you were not on the Shields case?

13 THE WITNESS: No, I was not.

14 THE COURT: Okay.

15 MR. GOLD: I don't know if your Honor had the Peavy
16 case.

17 THE COURT: Peavy, that's what I was --

18 THE WITNESS: Mr. Peavy was the first case in which I
19 was appointed by the court.

20 THE COURT: All right. So you were my expert on
21 Peavy?

22 THE WITNESS: Yes.

23 THE COURT: And then Wetmore?

24 MS. PIEMONTE-STACEY: Also a court-appointed expert.

25 THE COURT: Court appointed, and now you're here as

1 the defense expert?

2 THE WITNESS: That's correct. Peavy was the first
3 case I was appointed by the court; Wetmore was the second
4 one.

5 THE COURT: Thank you. All right.

6 THE CLERK: Dr. Prentky, could you raise your right
7 hand?

8 (Robert Alan Prentky, Ph.D., duly sworn.)

9 THE CLERK: Could you please take a seat and state
10 your name and spell it for the record?

11 THE WITNESS: Robert Alan Prentky, P-r-e-n-t-k-y.

12 MR. GOLD: May I inquire, your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION BY MR. GOLD:

15 Q. Good morning, Dr. Prentky.

16 A. Good morning.

17 THE COURT: Thank you for coming back.

18 Q. Dr. Prentky, could you please describe your current
19 occupation or job?

20 A. Full-time professor at Fairleigh Dickinson University,
21 metropolitan campus, in Teaneck, New Jersey, and I'm the
22 Director of Graduate Training in Forensic Psychology at the
23 university.

24 Q. And so is that academic post with a particular
25 department in the university?

1 A. Yes, the School of Psychology.

2 Q. And you stated you were the Director of which program in
3 particular?

4 A. Graduate Training in Forensic Psychology.

5 Q. In Forensic Psychology, how long have you held that
6 position?

7 A. This is my fourth year at Fairleigh Dickinson.

8 Q. And what credentials do you have that qualify you for
9 that position?

10 A. I'm not sure I understand your question. Are you asking
11 me what I did prior to coming here?

12 Q. Just, well, yes, I was trying to just ask a shorthand
13 question for your educational background.

14 A. All right. Very briefly I got my Ph.D. in 1975 in
15 Northwestern University, Evanston campus, Illinois, and that
16 was followed by three National Institute of Mental Health
17 post-doctoral fellowships.

18 The first being University of Massachusetts Amherst for
19 two years, followed by a stint in England at the University
20 of York, Heslington, York, followed by two years at the
21 University of Rochester Medical School, Department of
22 Psychiatry.

23 Q. And could you briefly describe your professional
24 experience after obtaining your Ph.D.?

25 A. All of my post-doctoral training was in the area of

1 psychophysiological assessment of high-risk families in the
2 area of schizophrenia.

3 When I completed my last year at the University of
4 Rochester, I was on-the-job market, and I moved to, briefly,
5 to Boston for several academic job interviews; and while I
6 was there, I applied for a job at a place called The
7 Massachusetts Treatment Center which was advertised in the
8 Mass. Psychological newsletter, Association newsletter, not
9 knowing exactly what they treated, but my principle
10 interest had been in research.

11 I had several job interviews there. I began a job
12 interview, but I was also called immediately to go down to
13 Bridgewater and experience the prison there for the first
14 time. It is a medium-security prison for sex offenders.

15 I accepted an invitation to come here as Director of
16 Research in 1980; and although I certainly didn't expect it
17 at the time, I was there for 13 years.

18 We developed a very large federally-funded research
19 program principally based on support from The National
20 Institute of Mental Health and The National Institute of
21 Justice oriented around the development of taxonomic systems
22 for the classification of sexual offenders.

23 Q. Dr. Prentky, if I could just stop you to clarify here.
24 The center where you were working where the institution was,
25 the Bridgewater Treatment Center for the Sexually Dangerous;

1 is that the name of it?

2 A. Correct.

3 Q. And is that an important place in the annals of sex
4 offender research?

5 A. I'm not sure how to respond to that. A lot of research
6 came out of it, if that's what you're asking me.

7 Q. And is there research continuing to be done based on
8 the populations of men at that institution?

9 A. Research continues to be published based on the data
10 that were collected at that time. Since we left, since my
11 colleagues and I left, to the best my knowledge there has
12 been no new programmatic research there. However, clearly,
13 research continues to be published based on the original
14 work that we did.

15 Q. And this is the data that you and your colleagues
16 collected pursuant to this federally-funded research
17 program?

18 A. That's correct.

19 Q. And what was the purpose of the federally-funded
20 research program?

21 A. Well, as I was saying, in the 1980s there was
22 particular interest on the part of The National Institute
23 of Justice to develop taxonomic systems for classifying a
24 range of different types of offenders; and we received
25 considerable funding during that decade to develop two

1 different models for classifying, one for classifying child
2 molesters and one for classifying rapists. We continued
3 working on that until the end of 1980s and into the early
4 1990s.

5 Q. And this taxonomic system for classifying sex
6 offenders, what place does it have in the literature area
7 of sex offender research today?

8 THE COURT: Is it agreed that he's an expert?

9 MR. GOLD: Yes, your Honor, and I understand the
10 time constraints that we're under, I do -- once I hit
11 several points, I'm going to move right on, but I think it
12 is agreed that he is an expert.

13 THE COURT: So we got going late so how long do you
14 think you're going to be with him?

15 MR. GOLD: On this part, probably another ten
16 minutes, and then we'll get right into the merits.

17 THE COURT: What are the time restraints on this?

18 MR. GOLD: We're going into the afternoon today, and
19 I think we should complete --

20 THE COURT: You do know I have two things on this
21 afternoon?

22 MR. GOLD: The clerk told me, yes.

23 THE COURT: All right. So I think Dr. Prentky
24 twice has been qualified as a court-appointed expert; I
25 believe the government doesn't challenge his qualifications,

1 is that right?

2 MS. SERAFYN: We don't, your Honor.

3 Q. Continue, Dr. Prentky.

4 A. As is often the case, the research is driven by the
5 priorities of the funding agencies; and as we moved into the
6 '90s, particularly with the advent of the first SDP law in
7 the State of Washington, we see ushered in a whole new wave
8 of research focused on risk assessments.

9 We began to gradually move in that direction, and
10 certainly I did. In 1994 I began working on a risk
11 assessment instrument for juvenile sex offenders.

12 Q. And did you develop an actuarial instrument?

13 A. I developed an instrument which is not actuarial; it's
14 structured as empirically guided research, very similar to
15 something like the SVR-20.

16 Q. And is that a type of instrument similar to an
17 actuarial an accepted protocol in your field?

18 A. It is absolutely similar to the actuarial with the
19 obvious exception that they do not have life tables
20 associated, probabilistic estimates of reoffense connected
21 to each of the scores.

22 Q. But it's a protocol which is developed to assist in
23 assessing risk of sex offenders?

24 A. Correct.

25 Q. And is the protocol that you developed in use in the

1 field today?

2 A. Yes.

3 Q. Now, Dr. Prentky, have you published in the field of
4 sex offender --

5 THE COURT: Excuse me. What's the name of it?

6 THE WITNESS: It's referred to as the J-SOAP, the
7 Juvenile-Sex Offender Assessment Protocol, J-S-O-A-P.

8 Q. Dr. Prentky, have you published in the area of sex
9 offending or sex offender recidivism research?

10 A. Yes.

11 Q. And approximately how many published articles do you
12 have to your credit?

13 A. My CV lists I think approximately 80 articles and book
14 chapters.

15 Q. Are there any -- is there research that you yourself
16 have performed which is germane to your opinion in this
17 case?

18 A. I suppose it would be hard not to say that most of
19 what I've done over the past 30 years is not germane. This
20 is a particularly difficult case. You have to talk about
21 what aspect of it if you want me to narrow my answer.

22 If we're really talking about risk assessment, then I
23 would say: yes, of course, the work I've done in the past
24 many decades is germane.

25 Q. Are there any articles in particular which -- well,

1 have your articles been cited by other authors in the field
2 of sex offender recidivism research?

3 A. Yes.

4 Q. Are they frequently cited?

5 A. I don't keep track. I would imagine; but as I said, I
6 don't keep track.

7 MR. GOLD: Your Honor, I have some exhibits. I'd
8 like to approach the witness with, put them on the stand, if
9 I may?

10 THE COURT: Yes, you don't even have to ask.

11 MR. GOLD: Thank you.

12 Q. Dr. Prentky, I've put some exhibits before you, and
13 just to keep the numbering straight, I'm going to ask you
14 something that's a little out of order ... exhibit --
15 proposed Exhibit No. 34, did you draft the report in this
16 case?

17 A. Yes.

18 Q. Do you recognize Exhibit No. 34 as the report that you
19 drafted --

20 A. Yes.

21 Q. -- in this case?

22 A. Yes.

23 Q. And Exhibit No. 35, do you recognize that to be your
24 resume?

25 A. Yes.

1 MR. GOLD: I'd move to admit those two.

2 THE COURT: All right.

3 MS. SERAFYN: No objection.

4 (Respondent's Exhibit Nos. 34 & 35
5 admitted in evidence.)

6 Q. Dr. Prentky, are you currently involved in research in
7 this area?

8 A. Yes.

9 Q. And what are your current research projects?

10 A. I continue to work on the development and validation of
11 the J-SOAP. As recently as perhaps a month ago we submitted
12 yet another proposal to the government for support for doing
13 an integrative development testing and validity study that
14 would bring together the J-SOAP and the other principle
15 juvenile risk assessment scale that exists in the field
16 referred to as the RRASOR developed by Dr. Moreland ... so
17 that would be a wonderful project if we could do that. So
18 I continue to work in the area, trying to better our
19 assessments of risk of juveniles; that's one project.

20 In quite a different area, and it's something we've been
21 involved in for about five years, and that's internet child
22 safety. We have been funded by the Department of Juvenile
23 Justice and Delinquency Prevention to examine a wide range
24 of different facets of internet safety as it pertains to
25 both children and adolescents.

1 It has many prongs to it. We have surveyed a large,
2 large amount of high school students, college students, and
3 offenders, and what would perhaps be again germane to this
4 case, the work that we've been doing with the cohort of
5 offenders in which we were able to look at known child
6 molesters and compare them with internet pornography
7 offenders, child pornography offenders, and then separate
8 the child molesters into those that also had internet
9 offenses ... so we effectively have three discrete groups,
10 and we've been attempting to answer the rather difficult
11 question of what risk is posed by an internet offender to
12 essentially assault a child.

13 Q. Now, when you say "we" in this context, Dr. Prentky,
14 who are you talking about; is it you and other colleagues?

15 A. It's a large number of co-investigators, and that
16 includes colleagues of longstanding including Beth Dowdell
17 at Villa Nova University and Dr. Anne Burgess at Boston
18 College, and Neil Malamuth at UCLA, and Dr. Federoff from
19 Canada. It's a fairly large group.

20 Q. And, Dr. Prentky, two more brief questions --

21 THE COURT: Can I ask you what do you mean by
22 internet offenders?

23 THE WITNESS: These are all individuals that have
24 been charged and been convicted for child pornography
25 offenses on the internet.

1 THE COURT: So not the people who are stalking
2 children?

3 THE WITNESS: No.

4 THE COURT: -- in chat rooms or --

5 THE WITNESS: No. Although, many of them may have
6 also done that, all of them had to have been arrested or
7 charged for either being in possession, downloading,
8 dissemination of child pornography over the internet.

9 These are all individuals, who when we assess them,
10 were either in prison or had been in prison and were now in
11 the community.

12 Q. And, Dr. Prentky, is this research as you stated to
13 determine the risk of hands-on offending by child
14 pornography offenders, is that the --

15 A. That wasn't the sole purpose of the project by any
16 means.

17 Q. But that is a purpose?

18 A. That was one of the many questions that was asked. As
19 I said, it was a multi-pronged effort that looked at many,
20 many different facets of this including the risk factors
21 that placed high school boys and girls at risk for child
22 pornography.

23 Q. And will this research culminate in a published report
24 of some kind, a government report or something of that
25 nature?

1 A. A final technical report has already been completed and
2 various papers are being worked on.

3 THE COURT: When you say "technical report," you
4 mean on the methodology or the results?

5 THE WITNESS: The results.

6 THE COURT: So what were the results?

7 THE WITNESS: It's a very, very long, as you can
8 imagine, rather dreary document.

9 THE COURT: It is the criminal justice question that
10 a lot of people ask?

11 THE WITNESS: Indeed.

12 MR. GOLD: Maybe I can bring him in for one of our
13 sentencing hearings?

14 THE WITNESS: I would be happy to share with the
15 Court the actual document, the final technical report.

16 THE COURT: Well, let me ask: are you hesitating
17 because it's supposed to be confidential?

18 THE WITNESS: No, no, no, it's not confidential at
19 all, no. I'm hesitating because of the length of it and the
20 time that we have here.

21 THE COURT: All right. So is it relevant to what
22 I'm doing here?

23 THE WITNESS: I think, your Honor, it's all
24 potentially relevant. I'm not sure how to labor in and
25 focus on particular aspects of the report on Mr. Carta as

1 one individual, but I think it's all of potential relevance.

2 I can tell you in brief that the models that we were
3 attempting to develop to predict an outcome of hands-on
4 sexual offending were quite successful.

5 They are undermined by a relatively small sample. We
6 had a total of 466 individuals; and of that 466, not all of
7 them were child molesters or internet offenders.

8 We did not signal our intentions when we went into the
9 prison, which means that there were people who may have
10 volunteered to take our survey who were rapists, individuals
11 who were not sex offenders, so those people had to be
12 excluded.

13 We ended up with 276 offenders that we could actually
14 compare. That's a relatively small sample for our purposes.
15 We found that the internet-only offenders clearly
16 distinguished themselves in a variety of different ways.
17 They were significantly higher in social competence than
18 the aggregate sample of child molesters, which is not
19 surprising. We found that they were significantly lower in
20 general antisocial behavior. We found that they were
21 significantly higher in, as one would predict, in internet
22 preoccupation.

23 Various scales have been developed. Internet
24 preoccupation was not key to predicting who would be a
25 child molester. In a nutshell, that's what those studies

1 found; but as I said, I would be happy to share that with
2 the Court.

3 THE COURT: Thank you.

4 Q. Dr. Prentky, have you specifically performed or have
5 you performed research by yourself and with colleagues
6 specifically on the question of the impact of age on the
7 risk of recidivism?

8 A. We published one study in the year 2007; it has not
9 been a focal point of my own research, but we do have one
10 study that we did publish, as I said, in 2007.

11 Q. And have you performed research specifically on rates
12 of reoffense among offenders of among the populations of sex
13 offenders?

14 A. Again, we published a study in 1997 on human behavior,
15 a 25-year year follow-up. It was never intended, at least
16 from my vantage, as a recidivism study per se.

17 I was curious about the methodological issues that would
18 result in variability among recidivism studies. That was
19 my concern at the time as we were saying a wide range of
20 estimates of base rates of sexual reoffending, and the
21 question that I set out to explore is whether I could
22 actually change the outcome of these base rates simply by
23 changing the methods to which we -- or the lens through
24 which we looked at sexual reoffending ... so if you change
25 the reference point, you know, what do you include as a

1 sexual reoffense, how do you define it legally, how does
2 the -- how could the base rates change? That would be --
3 from my vantage, that was the purpose of the study when we
4 did it.

5 Q. And is this a landmark study in the -- let me withdraw
6 that.

7 Is that an important study in the field; is it frequently
8 cited?

9 A. I believe so, yes.

10 Q. And do I understand your testimony correctly that it is
11 an empirical examination of recidivism studies themselves
12 or --

13 A. No.

14 Q. An empirical examination of the methodological issues
15 that recidivism studies raise?

16 A. Correct.

17 Q. But it's also a study based on an actual population of
18 individuals?

19 A. It's based on the population of sex offenders at The
20 Massachusetts Treatment Center.

21 Q. Dr. Prentky, have you -- the Journal of Law and Human
22 Behavior, is that a well-respected journal in your field?

23 A. Yes.

24 Q. Now, Dr. Prentky, have you received any recognition
25 in the field of -- in your area of psychology?

1 A. I guess having been designated a fellow would be
2 regarded as such, if that's what you're asking.

3 Q. Yes. What does that mean, to be designated a fellow?

4 A. One must be nominated, and by the respective
5 organization, and it requires a committee to vote on
6 whether one's contributions to the field are sufficiently
7 meritorious to designate the individual as a fellow of the
8 organization; and I was first appointed a fellow of the
9 American Psychological Association seven or eight years ago
10 and subsequently appointed fellow of APS, American
11 Psychological Society, about four years later.

12 Q. Have you performed research specifically on the impact
13 of sex offender treatment on sex offender recidivism?

14 A. I have written fairly extensively about it. It again
15 has not been a focus of my research.

16 Q. But when you say you've written extensively about it,
17 where have you written about it?

18 A. Many book chapters.

19 Q. Dr. Prentky, I'd like to turn to the merits of this
20 case. You've entered your report into evidence in this
21 case.

22 Is that report a summary of the conclusions that you've
23 reached with respect to the respondent in this case?

24 A. Yes.

25 Q. And can I ask you how you came to be involved in this

1 case?

2 A. Through communication from your office, directly through
3 you.

4 Q. And once you began to participate in this case, what
5 did you do?

6 A. Well, as always, I request discovery, and I began a
7 process of wading through the discovery in this case; there
8 was a lot to wade through. I customarily take notes. I
9 usually put those notes on the computer. In anticipation of
10 an interview, I generate questions for myself, a guideline
11 for the instructor interview that I conduct on an individual.

12 Q. And on Page 1 there is a summary of the documents that
13 you reviewed in the context of this case?

14 A. Yes.

15 Q. Is that a fair summary of the documents that you
16 reviewed?

17 A. Well, there were so many individual documents I couldn't
18 possibly list them individually so I indicated them simply
19 by Bates number. There were probably 1,000 pages or more of
20 discovery.

21 Q. And did you review the trial transcripts in this case?

22 A. Yes.

23 Q. And did you review reports by other experts?

24 A. Yes.

25 Q. Now, this particular report lists a report by

1 Dr. Phenix dated in September of 2008; did you have the
2 opportunity to the examine a subsequent update to that
3 report by Dr. Phenix?

4 A. Yes, I did, subsequent to the submission of my own
5 report.

6 Q. Did you interview Mr. Carta?

7 A. Yes.

8 Q. And how many times, and when did you do that?

9 A. I met with Mr. Carta twice, once on the 17th of May and
10 once on the 12th of July, for a total of approximately six
11 hours.

12 Q. And why do you interview the respondent in a case such
13 as this?

14 A. It would be from my vantage unethical to author an
15 opinion that goes to mental disorder, mental abnormality, or
16 diagnosis without interviewing the client; or had I not met
17 with him, that would be an entire area of his analysis that
18 would be essentially off limits to me. I would be very
19 reluctant in summary to log any opinion about mental
20 abnormality without actually meeting him and interviewing
21 him documenting it.

22 Q. Why is that, Dr. Prentky; why in your view is a record
23 review not sufficient to assess the condition?

24 A. The records rarely go to the kind of information that
25 I look for when I'm trying to determine relatively subtle

1 aspects of motivation, subtle aspects of behavior, traits of
2 personality.

3 In this particular case it's very, very difficult to
4 formulate an opinion with respect to mental abnormality. As
5 I believe are reflected in my report, I struggled with that
6 issue a great deal, and that was after having met with him.

7 Had I not met with him, it would have been virtually
8 impossible to have reached any kind of informed opinion with
9 respect to mental abnormality.

10 Q. When you say that in your view it would not be ethical
11 for you to have delivered an opinion on the mental disorder
12 prong, that's not the only position in your field, correct,
13 with regard to the ethics of making that assessment?

14 A. It's certainly a caveat that's provided for all
15 licensed psychologists who do this work. I'm not suggesting
16 to you that, you know, that all of my colleagues do it, but
17 it's clearly something that's commended to us and is part of
18 the code of ethics of psychologists.

19 I believe that in the code of ethics the words are
20 strongly recommended or strongly encouraged. It's not
21 something that you must do. However, if I didn't conduct an
22 interview, I would feel compelled to explain why it was not
23 possible.

24 Q. And would there be any limitations on your opinion that
25 you might express?

1 A. There would certainly be limitations, as I would
2 experience them, in coming up with an informed diagnosis,
3 and, again, my diagnosis depends on the case.

4 There are some cases that one could imagine that are
5 very straight-forward, and I could probably be comfortable
6 with relying on documents only, and there are other cases
7 such as Mr. Carta that I would be at a loss to come up with
8 a clear, sound, and informed diagnosis.

9 Q. Dr. Prentky, after speaking with me and starting to
10 participate in this case what did you understand the
11 question that you were being asked to be?

12 A. This is a Section 18 case, a 4248 case. Just as I have
13 experienced in cases before, it's a commitment case to
14 determine whether or not this man is committable under the
15 federal guidelines as a sexually dangerous person.

16 Q. And, Dr. Prentky, I put on the document viewer Exhibit
17 34, Page 7. There do you recite the statutory standard?

18 A. Yes.

19 Q. And is this the standard that you employed in
20 delivering or coming up with your assessment in this case?

21 A. Yes.

22 Q. And, Dr. Prentky -- well, let me leave this up here.
23 In your opinion is Todd Carta a sexually dangerous person
24 under Sections 4247 and 4248?

25 A. No.

1 Q. In your opinion, Dr. Prentky, does Todd Carta suffer
2 from a serious mental illness abnormality or disorder?

3 A. Well, as I mentioned a moment ago, this is something
4 that I have struggled with; and if you wish me to go into
5 that, I'll be happy to do that.

6 Q. I was just asking for a summary if you can?

7 A. In my report I eventually say no.

8 Q. And do you do a separate analysis as to whether
9 Mr. Carta will have serious difficulty refraining from
10 sexually violent conduct or child molestation if released?

11 A. I discuss it separately but it is, of course, linked to
12 the mental abnormality.

13 Q. And did you arrive at an opinion as to whether
14 Mr. Carta would have serious difficulty refraining from
15 those two categories of conduct?

16 A. That was the focus of my analysis with regard to risk,
17 and I did conclude and feel even more confident in my
18 conclusion that we cannot or I cannot reach the opinion
19 that he would have serious difficulty refraining from
20 sexual misconduct.

21 Q. And sexual misconduct, you just emphasized that word in
22 contrast that what type of conduct?

23 A. Mr. Carta obviously has a long track record stemming
24 back to approximately the age of 15 of general delinquent,
25 impulsive, antisocial behavior. It would be relatively

1 easy for me to conclude at this point even today at his
2 age that he may experience difficulty refraining from
3 generic inappropriate behavior. His past behaviors
4 demonstrated that to me.

5 Q. Dr. Prentky, I'm going to ask you to tell the Court
6 based on the records that you reviewed and the information
7 that you obtained from Mr. Carta himself, did you develop a
8 sense of Mr. Carta's developmental, psychosocial, and
9 medical history?

10 A. Yes.

11 Q. And could you relate to the Court the psychosocial and
12 developmental history of Mr. Carta as it pertains to your
13 opinion in this case?

14 A. Very briefly, I apologize for encapsulating your life
15 in ten minutes, but, very briefly, Mr. Carta was born in
16 1960 --

17 THE COURT: Do you want to pull the mic down just
18 a little, just because we're losing you a little bit.
19 Thank you.

20 A. He was raised in Connecticut; and with the exception
21 of roughly four years, from 1994 to 1998 he lived in
22 California, he's always lived in Connecticut. He's the
23 youngest of four children. He has an older brother and
24 two older sisters. His father served in the Second World
25 War and came back and worked at a factory at New England

1 Aircraft for about 25 years. When he retired, he worked as
2 a taxicab driver as I recall.

3 All four children were exposed to a significant level
4 of psychological, emotional, and physical abuse that was
5 primarily instigated and perpetrated by their mother. One
6 of Mr. Carta's sisters, Anna, I believe, ten years his
7 senior, commented that their mother was a survivor of
8 war-torn Belgium and his father was raised in an orphanage;
9 that when you put the two together, it perhaps begins to
10 explain why Mr. Carta has described his home life as
11 loveless and cold.

12 The sisters seemed to have fared better than the
13 brothers. Mr. Carta has told me that both of his sisters
14 were able to go on and develop stable, long-term marriages
15 with families. The brothers not so well. Mr. Carta's older
16 brother is a severe alcoholic and has spent much of his
17 life living in homeless shelters.

18 In addition to what I've mentioned, Mr. Carta had been
19 sexually abused on a variety of occasions, at the age of 9.
20 He was abused first by a 14-year-old when he was 9-years-old,
21 and, again, by a, I believe, a 16-year-old when he was again
22 9-years-old.

23 At age 15 Mr. Carta discovers a man that I recall was in
24 his 60s when the two of them had met while fishing. This man
25 was kindly disposed toward him and effectively provided

1 caring, and Mr. Carta received some love and support and
2 warmth in exchange for sexual favors; and this went on for
3 awhile. There were about 20 or so sexual encounters between
4 Mr. Carta and this 60-year-old man.

5 Mr. Carta's track record of sort of conduct disorder and
6 delinquency begins -- seem to begin around the 8th grade.
7 It's around that time period that he becomes significantly
8 involved in drugs. It's around that same time period at the
9 8th grade when he's expelled from school for truancy and
10 suspensions. He never returned to school, which is indeed
11 very unfortunate, Mr. Carta says in particular, since he is
12 an extraordinarily bright man.

13 I make that comment not as a passing observation but on
14 reflection of the report that was done when he was down in
15 Butner in 2006. He was described as having an IQ of
16 approximately 132 which places him several standard
17 deviations above me.

18 As I noted earlier, he spent about four years out in
19 California. He described himself as a Deadhead. He went
20 there sometime after Garcia died.

21 Q. Garcia?

22 A. Jerry Garcia, and he became part of this Deadhead
23 family, which openly he described as being, again, very
24 caring. His comments about the group of people that he met
25 there was they were a very close-knit group. They cared

1 about you. They helped you ... similar kind of remarks
2 that he made about the fisherman.

3 He said he came back after four years; it's not clear
4 what he did there other than supporting himself by working
5 for a cleaning company, no indication that I've seen of any
6 risk conduct.

7 He comes back to Connecticut. He has no stable
8 employment really at any time in his life. Most of his
9 jobs are unskilled. As I mentioned, he worked for a
10 cleaning company, has worked various odd jobs. He has done
11 a fair amount of painting most likely under the table but no
12 stable employment.

13 I think I mention in my report that I found it rather
14 curious that a probation officer comes to his house I think
15 it was in May of 2002, and he described it as, I used the
16 word "oddly," because he described it as a welcoming visit.

17 He was happy to see this woman who came to see how -- to
18 check-up on him simply because, once again, there was the
19 delivering of someone, if you wished to coach it that way,
20 to care about him. It seems like this has been something
21 that he's searched for his entire life.

22 He has one marriage, again rather dysfunctional. He
23 meets Lucille in 1984. He was 24 years old; she was 17 at
24 the time. They eloped. They went down to Florida. They
25 were only there for about six months, I think, before

1 coming back to Connecticut.

2 They were married, and they were only married, I
3 believe, 16 months before the marriage dissolved. They
4 were married long enough to have one child, a daughter,
5 Vanessa, and that's essentially the thumbnail sketch of who
6 Mr. Carta is.

7 It brings us up, of course, to his governing offenses or
8 governing events, that was possession and dissemination of
9 child pornography that essentially began in 1999, at least
10 that's when the investigation began.

11 Q. Well, Dr. Prentky, you mentioned that Mr. Carta
12 experienced sexual abuse when he was a younger person ...
13 against this backdrop that you've laid out, can you describe
14 his sexual developmental history in that context?

15 A. I think there are two comments that I would make.
16 First of all, his sexual developmental history, of course,
17 is rather clear. You know, had he come from a relatively
18 normal, stable, intact, loving home, it is not clear what his
19 sexual preference would be today. It is conceivable that
20 his same-sex preference, issues from all of his early life
21 experiences, both sexual abuse when he was 9, and, in
22 particular, his primary sexual experience that he had with
23 this fisherman when he was 15, but it strikes me from some
24 of the comments he made to me ... what was more important
25 or at least equally important in terms of trying to

1 understand his outcome was the emotional and psychological
2 abuse that he reports from his mother.

3 He made one comment that I found particularly poignant.
4 He said that she would scream at me, tell me I was a bad
5 child, a mistake. Telling me I was a mistake would rip me
6 apart, and those kind of remarks seemed to inflict for me a
7 far more deep-seated sort of trauma, emotional trauma, than
8 even the sexual abuse.

9 He might have been able to cope with the sexual abuse
10 and rise above it and go on to a fairly normal life,
11 law-abiding life, had he otherwise come from a home that
12 had some, some degree of support and love and caring.

13 Q. You mentioned the governing offense in this case.

14 What is your understanding of the governing offense?

15 A. The governing offense, to the best of my understanding,
16 as I indicated, are the charges for possession and
17 dissemination of child pornography, and the investigation
18 of that begins, as I said, around 1999.

19 Q. And what is the -- can you relate to the Court your
20 understanding of the factual basis for that conviction?

21 A. As many other aspects of this case are complex, so are
22 the details that lead up to this eventual arrest and these
23 charges. It appears as though, again, in more or less
24 aggregate chronological order: he was arrested on the
25 29th of October in the year 2000 for a completely

1 unrelated matter, having to do with a domestic dispute
2 involving Frederick. This was a 17-year-old man that he
3 had been in a sexual relationship with for roughly six
4 months.

5 Unrelated to that, in February 2001 Mr. Carta had
6 mailed a CD or several CDs and a modum to an individual in
7 Connecticut that was known apparently to be a participant in
8 a child pornography video.

9 Shortly thereafter, or roughly only four days thereafter,
10 I believe, the same man that he had been in a domestic
11 complaint with filed a complaint. The complaint involved
12 harassing letters and harassing flyers, and I believe also
13 harassing phone calls.

14 The police began investigating the matter on
15 February 8th; that is, the mailing of the CDs and the modum
16 which the postal inspector had picked up, and during their
17 investigation of that matter it was revealed that Mr. Carta
18 had provided alcohol -- alcohol and marijuana to Frederick's
19 15-year-old brother and two other teenage boys, and that he
20 had been sexual with the 15-year-old brother.

21 I believe that that was the incident that led to the
22 September 2001 charges involving risk of injury.

23 THE COURT: So I understand, the two other boys,
24 were they also 15, do you know?

25 THE WITNESS: I don't recall, your Honor, seeing

1 ages. I believe the 15-year-old was the only one that he
2 was sexual with, but I don't recall seeing the ages of the
3 other two.

4 Q. After Mr. Carta was arrested for this offense, was he
5 out in the community for a period of time?

6 A. Yes. He is eventually arrested on the 9th of April,
7 2002, and charged with transportation of child pornography
8 and criminal forfeiture, and it's at that point that he
9 receives a 60-month sentence in federal prison.

10 That appears to be the governing offense, and then he
11 actually is sentenced on the 8th of October, 2002 ... so he,
12 of course, is out at this point until he was sentenced, and
13 he goes to federal prison on the 8th of October, 2002.

14 Q. And is the fact that he spent this period out in the
15 community a fact which is relevant to your risk assessment
16 which we will discuss later on?

17 A. Well, obviously, it has to be taken into consideration.
18 There was a period of roughly, what, six months or something
19 like that that he was free in the community and didn't
20 commit any further offenses.

21 Q. Now, Dr. Prentky, in your report you have a discussion
22 of the -- of Mr. Carta's institutional history. Can you
23 describe for the Court --

24 THE COURT: Excuse me. Can I back up for a minute.
25 What kinds of pictures were they?

1 THE WITNESS: There were many pictures depicting --
2 well, first of all, perhaps I'll say I didn't naturally see
3 them myself, but this is only what I've read.

4 There were a lot of pictures depicting children, a lot
5 of pictures depicting adolescents. There was a wide and
6 diverse range of pictures from young children all the way to
7 adolescent teenage boys.

8 THE COURT: By adolescents, do we have a time, an
9 age like?

10 THE WITNESS: It's very, very difficult. The
11 investigators will occasionally try to use Tanner staging
12 to attach ages to the children that they're looking at. I'm
13 aware that there are -- I have seen a number of warnings
14 against using at least Tanner stages to refer ages, but
15 nonetheless, they are used. So some of the youngest
16 children would be Tanner stages 1 and 2, and some of the
17 older children, that clearly would fall more in the
18 adolescent range would be Tanner Staging 3 -- or Tanner
19 Stage 3.

20 THE COURT: Which means?

21 THE WITNESS: Tanner Stage 1 is generally age 10 or
22 younger and defined by the absence of pubic hair. Tanner
23 Stage 2 is somewhat more ambiguous because there's some
24 evidence of pubertal development, some evidence of pubic
25 hair, but it's clear that the individual is not fully

1 developed. There's sort of a gray area between Tanner
2 Stage 1 and 3.

3 Tanner Stage 3 is generally older than age 13, age 13 or
4 older, and one observes generally the full psychophysical
5 development at that point that tends to, as I said, be
6 associated with teenagers that are aged 13 or older; and,
7 again, I hasten to add that the Tanner Stages for girls are
8 not the same as the Tanner Stages for boys.

9 THE COURT: Oh, so at point were these boys or
10 girls?

11 THE WITNESS: Boys generally; although, there were
12 girls too as I recall. There were both, but, obviously,
13 his particular interest would be boys, but the Tanner
14 Stages for girls, of course, they reach these milestones at
15 younger ages than boys. And as I said a moment ago, as I'm
16 providing ages I'm aware of the caveat against using
17 chronological ages attached to these Tanner Stages.

18 THE COURT: And when he sent the CD to somebody
19 who was participating in a child porn video, what was that
20 about; do you have more details?

21 THE WITNESS: Well, again, that's what I read,
22 your Honor, that one of the -- the individual that
23 Mr. Carta actually mailed the CDS and the modum to was an
24 individual that had been identified as a participant in a
25 child pornography video.

1 THE COURT: Like with a child?

2 THE WITNESS: Correct, except I would imagine at
3 this point that it was a now grown-up or at least perhaps a
4 teenager -- again, I've never --

5 THE COURT: But you don't know?

6 THE WITNESS: I don't know about the age; I have no
7 idea, but I would imagine it would be perhaps a teenager who
8 had been in a -- as a child in a child pornography video --

9 THE COURT: But you don't know?

10 THE WITNESS: -- that I'm referring to, but I don't
11 know.

12 THE COURT: What about what was on the CD, do we
13 know?

14 THE WITNESS: I do not.

15 THE COURT: So you don't really know the details of
16 that offense?

17 THE WITNESS: Not at all.

18 THE COURT: And you didn't ask him?

19 THE WITNESS: Nothing more than what I've shared.

20 THE COURT: And you didn't ask him about that when
21 you talked to him?

22 THE WITNESS: I don't recall if I did. It's been
23 quite awhile now. I would have to go back and look at my
24 notes.

25 THE COURT: Okay. Thank you.

1 Q. Dr. Prentky --

2 THE COURT: Can I get a sense -- I know I keep
3 interrupting so I'm part of the problem, but how long do
4 you think you're going to have with the remainder of direct?

5 MR. GOLD: I think we're about to conclude what I
6 think is the facts of the case and then we move on to the
7 elements.

8 THE COURT: No, I just want to --

9 MR. GOLD: So we've got I think an hour-and-a-half
10 total for me.

11 THE COURT: Left?

12 MR. GOLD: Yeah, maybe an hour.

13 THE COURT: How long do you think you'll be on
14 cross?

15 MS. SERAFYN: An hour-and-a-half to two hours.

16 THE COURT: Well, at some point, let me ask the
17 court reporter....

18 (Whereupon, a brief discussion
19 commenced off the record.)

20 THE COURT: So we'll plan on breaking for 15 minutes
21 for noon, does that sound all right?

22 MR. GOLD: All right.

23 Q. Dr. Prentky, does information about the child
24 pornography collection come from Mr. Carta himself?

25 A. It comes both from Mr. Carta as well as the

1 investigators that obviously issued their reports after
2 having looked at it.

3 Q. And was Mr. Carta a passive recipient of child
4 pornography or was he someone who maintained a collection of
5 it for trading purposes?

6 A. More the latter. More the latter. He seemed to have
7 a wide range of pornography that spilled out over the
8 boundaries of what one would probably regard as his sexual
9 preference, and I can only infer from that that he was
10 using many of those images for trading purposes.

11 Q. Has Mr. Carta stated to you in the course of your
12 evaluation anything about his child pornography collection
13 that's germane?

14 A. Mr. Carta described it in a way that is not
15 inconsistent with what I've heard from some other men that
16 I've evaluated; in that, there was a compulsive quality to
17 it, that he went beyond collecting pornography simply as
18 nonusers who might infer that one would be looking at
19 pornography simply to gratify sexual needs; however, so many
20 individuals that I've spoken to including Mr. Carta say that
21 the driving force underlying this goes well beyond that;
22 that there was something that became rather compulsive
23 about collecting pornography.

24 I've heard men say things like: Oh, you know, it was
25 like collecting baseball cards when I was a kid. One man

1 said to me: Oh, you know, it's just like when I was a kid
2 I had Beanie Babies; I needed to collect every Beanie Baby,
3 and I threw them in the closet. There is a sort of a
4 quality that is hard to understand but it's obviously
5 satisfying some --

6 THE COURT: Excuse me. These Beanie Baby, baseball
7 cards, is that what Mr. Carta said --

8 THE WITNESS: No, it's not, your Honor.

9 THE COURT: -- or this is something totally
10 different?

11 THE WITNESS: I'm talking about other people that
12 I've evaluated that report to me a similar kind of
13 underlying drive, force, a motivation to collect that
14 simply became compulsive, and it went way beyond what we
15 would understand to be simply sexual gratification, simply,
16 the need to collect, to gather every type of image. Now,
17 whether that's used simply for trading purposes, I don't
18 know.

19 THE COURT: So what did he say again he wanted to
20 collect, Mr. Carta?

21 THE WITNESS: He said to me that he was collecting
22 in part for trading purposes.

23 THE COURT: Collecting what?

24 THE WITNESS: Oh, a wide range of different types of
25 images.

1 THE COURT: Of?

2 THE WITNESS: Both children, prepubescent children
3 and pubescent adolescent aged children.

4 THE COURT: Both categories?

5 THE WITNESS: Correct, that's correct.

6 Q. Dr. Prentky, if I could refer you to Page 9 of your
7 report, the paragraph that begins "Although," if you could
8 just briefly examine that paragraph.

9 A. Yes.

10 Q. Does that refresh your recollection as to the statements
11 that Mr. Carta made about his child pornography collection
12 and his relationship to it?

13 A. It's not inconsistent. I believe that I've already
14 shared with the Court; namely, that there were a wide
15 range of images. The images, the images that he was most
16 interested in are images that involved adolescent males, but,
17 obviously, they were preadolescent images, preadolescence as
18 well, if that's what you're asking me, prepubescent children
19 as well.

20 Q. Mr. Prentky -- Dr. Prentky, I'm sorry, what I'd like to
21 do is have you speak briefly about Mr. Carta's institutional
22 course with particular emphasis on his period in the sex
23 offender treatment program, and then I'd like to move into
24 the elements of the opinion in particular.

25 Could you describe his course in the Bureau of Prisons?

1 A. There's one word that comes to mind, and it's
2 astuteness. He has been in prison now for, what, eight
3 years, over eight years. He has received quite a number of
4 disciplinary reports for a range of institutional misconduct
5 including things like: misuse of a telephone at Allenwood;
6 he was written up for threatening bodily harm while he was
7 at Butner, insolence, having unauthorized property, to wit:
8 a radio, mouthing off to a woman in the SOTP program and so
9 forth.

10 His accomplishments, however, are by no means sort of
11 dwarfed by his misconduct. He was in the CODE program,
12 which is a year-long residential program. He was in a
13 program called Breaking Barriers. That's a two-week
14 intensive program for breaking the chain of events that
15 leads you back repeatedly to prison.

16 He was in the basic and advanced computer skills
17 courses. He was in the eight FEMA programs, the federal
18 emergency management agency programs, including emergency
19 planning, principles of emergency management, professionals
20 in emergency management, and so forth. There were, I
21 believe, eight different programs that he's completed.

22 And then he spent something like seven or eight months
23 in the SOTP program at Butner from late July 2005 until
24 March 2006. He attended all of the various process groups
25 that are part of the Butner program. He attended the

1 community meetings. He characterized it as 24-hour
2 programming; it never stopped.

3 The circumstances surrounding his decision to drop out
4 of the SOTP had been called into question, but I don't
5 believe anyone has ever called into question the benefits
6 that he derived from the time that he was in that program
7 prior to dropping out.

8 THE COURT: So could you give me some sense of the
9 dispute as to why he dropped out?

10 THE WITNESS: I'll be happy to share with you,
11 your Honor, what Mr. Carta said to me. He was increasingly
12 in disputes with individuals who were responsible for
13 the program itself around matters having to do with
14 confidentiality of disclosures that he made that required
15 an iron-clad requirement on the part of the offenders that
16 everything that's stated on the part of the offender in
17 the context of this SOTP, obviously, must stay there, is
18 entirely confidential.

19 However, there's no such guarantee of confidentiality on
20 the part of the institution itself ... so that everything
21 that an inmate discloses is understood to be available for
22 use by the institution itself, and there was an increasing,
23 ever increasing amount of tension around those issues
24 having to do with confidentiality. I believe that that
25 ultimately was --

1 THE COURT: So that's the reason that he gave you?

2 THE WITNESS: That's correct.

3 THE COURT: And when you said it was a dispute about
4 that, did Butner have a different point of view as to why he
5 dropped out?

6 THE WITNESS: Well, naturally, Butner strongly
7 encouraged him and they sent him in, and they strongly
8 encouraged him to return to therapy ... so, obviously, they
9 tried to encourage him to return, and he didn't.

10 THE COURT: So what did you say was the dispute?

11 THE WITNESS: The dispute involves certain
12 altercations that Mr. Carta was written up for vis-à-vis
13 a man that he had been sexual with, and he had received a
14 disciplinary report for this, and whether or not this was a
15 legitimate basis for a disciplinary report seemed to be in
16 dispute.

17 THE COURT: So I'm just trying to understand, was he
18 thrown out of the program: no?

19 THE WITNESS: No, he dropped out.

20 THE COURT: So when you say dispute, you mean it was
21 one of the reasons why Mr. Carta was feeling hostile to the
22 administrators?

23 THE WITNESS: Yes, in effect, perhaps that's a, you
24 know, fair way of characterizing it. Yeah, no, he was not
25 thrown out, and, in fact, the last --

1 THE COURT: Because don't forget, in other cases
2 I've had, for example, Mr. Wetmore was actually thrown out
3 of the program.

4 THE WITNESS: Yeah, right.

5 THE COURT: So this was not a situation where he was
6 accused of misconduct and the program booted him; this was
7 where he felt he was -- his statements were being -- weren't
8 being kept confidential or he was unfairly disciplined so he
9 basically rebuffed them?

10 THE WITNESS: He was the one that dropped out. He
11 elected to drop out. I saw at least one memo strongly
12 encouraging him to return. He did not. That's correct.

13 THE COURT: All right, I have just wanted to --

14 THE WITNESS: However, it's also correct that he was
15 written up for being sexual with another inmate.

16 THE COURT: How old was that man?

17 THE WITNESS: I believe it became at issue because
18 this was a younger individual, and, obviously, it had to be
19 an adult to be at Butner.

20 THE COURT: But was there a big age difference?

21 THE WITNESS: Yeah, there was an age difference, and
22 he was understood somehow to be predatory, that he was --
23 well, I --

24 THE COURT: So is there a question on the table?
25 Did you want to add something?

1 THE WITNESS: I'm not sure if Attorney Gold would
2 want me to continue?

3 THE COURT: I think we were talking about why he
4 left the program, is that it?

5 THE WITNESS: I mean, Mr. Carta shared with me his
6 experiences during the time that he was in treatment, and he
7 clearly was actively and deeply moved as he was relating his
8 experiences to me in treatment.

9 There was a time, as he was talking to me, that he was
10 actively crying. He was talking about how ashamed he was of
11 his misdeeds. He was talking about how he had effectively
12 wasted his entire life. He was talking about the terrible
13 ways that he treated his parents. He was a terrible kid,
14 that he treated his parents, to use his word, like shit.

15 He talked about how he would swear at his mother, how he
16 pushed his father, and he characterized himself as a very
17 deeply hurt, angry child. This is what he shared with me
18 during the time that he was with me.

19 He further characterized himself as hypersexual. He
20 understood that because of how young he was when his
21 sexuality was awakened. He said that it was roughly the
22 age of seven.

23 Then, he talked about the sexual experiences years later
24 with this 60-year-old man, and he said he thought that the
25 old man loved me, the old man cared about me, and it felt

1 good. It meant to me that he must care about me, and it was
2 evident to me at the time that my parents didn't.

3 These are all the things that he shared with me during
4 the time that we were together. He further said in no
5 uncertain terms that I am the owner of all of my behavior; I
6 am responsible for all of my behavior, and he ended by --
7 with the comment that if I ever, ever, go out and commit
8 another sexual offense, I deserve to be locked up for the
9 rest of my life. I'd be a stupid idiot.

10 Q. Dr. Prentky, if I could, I want to put before you a
11 couple of documents. One is been marked as Exhibit 21.
12 Can you read that? Can you see that on the document viewer?

13 A. Yes.

14 Q. And this is a document which is marked as Bates stamped
15 document No. 400, is that among the documents that you
16 reviewed?

17 A. Yes.

18 Q. Now, could you, you just testified that there was --
19 that Mr. Carta was written up for being sexual with someone
20 else at Butner?

21 A. Yes.

22 Q. Could you read the contents of this document to
23 yourself? Could you discuss what is happening in
24 Exhibit 21?

25 A. This is, it looks like a memo, that was submitted by

1 an intern by the name of Mr. Wood on the 31st of January of
2 '06 regarding Mr. Carta's request to submit what is called
3 a copout to quit the SOTP program, and in this memo Mr. Wood
4 says that Mr. Carta was unable to take feedback from other
5 members of the group. Mr. Carta was visibly distressed and
6 crying. Parallels were drawn between his offending cycle
7 and his behavior in the program.

8 He admitted that he was placing himself in positions to
9 be close to the younger members of the group that he was
10 sexually attracted to. He went to a community meeting,
11 admitted his behavior, talked about his behavior to the
12 other participants, asked for their help in changing his
13 behavior.

14 He received support and encouragement, and then the last
15 sentence is, "will meet with inmate later this week to
16 process today's events as well as enact a plan for him to
17 increase his social circle beyond these young members with
18 whom he is attracted."

19 Q. And, Dr. Prentky, I'm showing you a document which is
20 a document that I believe has been admitted into evidence in
21 the prior proceeding but I can't prove it so I'm going to
22 admit it, I'm going to seek to admit it now.

23 This is a subsequent note by the same author. It is
24 Bates stamped number 407. Is this among the documents that
25 you recognize as having reviewed for the purposes of this

1 case?

2 A. Again, it appears to be a follow-up memo from the same
3 intern, Mr. Wood, on the 11th of January '06.

4 Q. And is Bates Stamp 407 among the rung of numbers that
5 you reviewed in preparation for this case?

6 A. Yes.

7 Q. And do you recognize this document as being among the
8 documents that you reviewed: yes?

9 A. Yes, I believe so.

10 Q. And, Dr. Prentky, this subsequent interaction that
11 Mr. Carta had with Mr. Wood, what is the subject of your
12 discussion here? Could I ask you to read, well --

13 THE COURT: Which exhibit is this?

14 MR. GOLD: This is admitted or, I'm sorry, I'm
15 seeking to enter this now.

16 THE COURT: Exhibit No.?

17 MR. GOLD: 30.

18 THE CLERK: 36 will be the next number.

19 THE COURT: All right, so this is not in my book?

20 MR. GOLD: I found it in the books, but I think it
21 might have been my mistake so it's either in a run of
22 documents that were already in the book.

23 THE COURT: But if not, you'll just give it to me
24 anyway?

25 MR. GOLD: I'll admit it now as Exhibit 36.

1 THE COURT: All right.

2 (Respondent's Exhibit No. 36 admitted in evidence.)

3 Q. Dr. Prentky, could you read the paragraph starting
4 "inmate indicated" into the record?

5 A. Yes. "Inmate indicated that he is doing well in the
6 program and not experiencing any significant problems. He
7 brought up that a community member asked him who his clique
8 was. This opened the door for discussion of inmate's focus
9 of mentoring younger, newer inmates in the SOTP."

10 Q. All right. Just to stop you there, the word "mentoring"
11 is in quotes by the author, Mr. Wood?

12 A. Right.

13 Q. What does that communicate to you?

14 A. Taking these individuals under his wing.

15 Q. Please continue?

16 A. "Inmate admitted that there are several young inmates
17 with whom he associates but was quick to defend that the
18 program is based on helping others, etc. Inmate was able to
19 acknowledge that he was attracted to one of the inmates he
20 formally counseled, again in quotes, but denied attraction
21 with others. In fact, he identified one of the other young
22 inmates as his best friend -- as the best friend he has ever
23 had and stated that he had to quit associating with him as
24 a program issue" -- I'm sorry, "that if he had to quit
25 associating with him as a program issue, he would quit

1 SOTP.

2 Inmate had a number of rationalizations and
3 justifications as why it was acceptable for him to behave
4 as he had. He was reminded that this was important
5 treatment issue for him and something that he needs to
6 address if change is important to him.

7 Inmate verbalized a number of reasons why he does not
8 associate as much with older members (while also highlighting
9 the few he does associate with), which essentially comes down
10 to the fact that he is more comfortable, that is, has more in
11 common, with the younger members.

12 Additionally, inmate stated that when he is released he
13 will look for a partner who's in their young to mid 20s.
14 Problematic aspects of his behavior patterns were addressed,
15 as well as, what a healthy relationship for him would look
16 like."

17 Q. And then the writer goes on to say that "inmate
18 verbalized some anger about another issue in an appropriate
19 way"?

20 THE COURT: I don't want him to read it.

21 MR. GOLD: No, we're done reading it.

22 Q. Dr. Prentky, you testified earlier, and I just want to
23 be very clear about this point, that it was your impression
24 that you inferred from the records that Mr. Carta had, in
25 fact, been sexual with another inmate while in the Butner

1 treatment program.

2 The records that I've just put in front of you indicate,
3 I think, some of what was going on in the program. Are you
4 aware of any other documents beyond this issue of mentoring
5 which would substantiate that Mr. Carta was alleged to be
6 sexual with an inmate in the Butner program?

7 A. Counsel, that was my impression. Obviously, I could
8 easily be mistaken, and we're talking about voluminous
9 records here.

10 THE COURT: Do you remember as you sit here whether
11 you got that impression from a document or something
12 Mr. Carta said?

13 THE WITNESS: No. No, that was my impression from
14 what Mr. Carta shared with me; but as I said, your Honor,
15 I could easily be mistaken with the enormous amount of
16 information here.

17 THE COURT: Do you have your notes with you here?

18 THE WITNESS: My original handwritten notes, I don't
19 have them here, your Honor.

20 THE COURT: It would be useful, I mean, whether
21 it's today or some other time, whether you could go back to
22 them and see if you refresh your recollection to see
23 whether this is something Mr. Carta said or whether this
24 is the incident, and maybe you just got a misimpression.

25 THE WITNESS: Perhaps. That was my impression,

1 though.

2 Q. Dr. Prentky, moving -- should we take a break?

3 THE COURT: Yes. Yes, why don't we go off the
4 record and take a quick break, and I'll need you to wrap up
5 by 1 today.

6 MR. GOLD: Okay, 1. Okay, 1, and that gives them
7 two hours on the other side?

8 THE COURT: Maybe, but I also have these afternoon
9 things and I would like Dr. Prentky to not have to come
10 back; that's essential, so it took an unbelievably long
11 time.

12 I was, as you know, very eager to finish this by the end
13 of last year; we couldn't because of the difficulties in
14 getting the experts' schedules coordinated with counsel's
15 and my own, and it didn't work ... so if we have to have
16 you come back, it just moves it out some more, okay.

17 THE CLERK: All rise.

18 (Whereupon, a brief recess convened.)

19 THE CLERK: All rise. You can be seated.

20 BY MR. GOLD:

21 Q. Dr. Prentky, when we stopped for the break, we were
22 talking about the circumstances behind Mr. Carta's
23 withdrawing from the treatment program.

24 Do you recall that?

25 A. Yes.

1 Q. Now, Dr. Prentky, Mr. Carta participated in the
2 treatment program for how long was your testimony?

3 A. Five, six months.

4 Q. And in that period he made disclosures about his sexual
5 history?

6 A. Correct.

7 Q. And much of the information that we have about his
8 history, both his history being the victim of sexual abuse
9 and also his reactive behavior after, that comes from him,
10 correct?

11 A. Correct.

12 Q. And that is part of the information that you used to
13 arrive at your diagnoses and opinion in this case?

14 A. Yes.

15 Q. Now, Dr. Prentky, in your opinion does Mr. Carta --
16 has Mr. Carta committed sexually violent conduct or child
17 molestation within the meaning of the statute, that's the
18 first prong of the statute?

19 A. You mean did his deviant behaviors qualify for
20 consideration, is that what you're asking me?

21 Q. Yes.

22 A. If the governing offense is solely possession and
23 transportation of child pornography, then that question
24 would be rather dubious.

25 Q. But based on his disclosures, do you arrive at an

1 opinion or a position with regard to the first element of
2 the statute?

3 A. Based on his disclosures, it is arguably appropriate
4 for at least considering commitment. However, as I said,
5 if we're simply talking only about what is known, the child
6 pornography, then my way of thinking would be rather dubious.

7 THE COURT: Well, I think there are three prongs
8 here. So the first is, did he commit child molestation in
9 the past. So the question is: based on what he said, has
10 he?

11 THE WITNESS: Based on his self-report, the answer
12 would be yes.

13 Q. Dr. Prentky, moving to the second prong --

14 THE COURT: I think that was stipulated to, right?

15 MR. GOLD: I don't know if we formally stipulated to
16 it but --

17 MS. SERAFYN: I thought we did, your Honor, because
18 as you remember this case was remanded and --

19 MR. GOLD: Oh, that's right.

20 MS. SERAFYN: And there was no dispute about the
21 first element.

22 THE COURT: And the what?

23 MS. SERAFYN: There was no dispute about the first
24 element, but I think as your Honor hadn't heard this case
25 before, you wanted some testimony as to the second and

1 third prongs, your Honor.

2 MR. GOLD: Judge, I didn't mean to open up a
3 philosophical discussion about the first element. I just
4 wanted to move through it. I don't know that we formally
5 stipulated; maybe we did. I concede it now.

6 MS. PIEMONTE-STACEY: It's not a stipulation; it's a
7 First Circuit decision, your Honor, saying that we proved
8 that and affirming that piece of it anyway.

9 THE COURT: Anyway, it's not in dispute here.

10 MR. GOLD: Fine.

11 THE COURT: I just think it was confusing because,
12 perhaps with the expert here, he thought he meant the
13 indexed offense as opposed to what was admitted in the
14 past so --

15 MR. GOLD: Just I'll move to the second prong.

16 THE COURT: All right.

17 Q. In your opinion does Mr. Carta have a serious mental
18 illness, abnormality, or disorder within the meaning of the
19 statute?

20 A. No.

21 Q. And please describe the basis of that opinion.

22 A. I have tried to set out a formulation for the way I
23 conceive of the diagnosis of hebephilia, and I go into
24 some detail in my report with regard to my understanding
25 of that diagnosis. I should say --

1 Q. Now, Dr. Prentky, on your -- on the witness stand is
2 Exhibit 29. Do you see a document which is labeled
3 Exhibit 29?

4 A. Yes, correct.

5 Q. And what is that document?

6 A. An article by Ray Blanchard and his colleagues that
7 appeared in the Archives of Sexual Behavior.

8 Q. And what is the subject of that article?

9 A. Pedophilia, Hebephilia, and the DSM-V.

10 Q. Now, do you make reference to this article in the body
11 of your report?

12 A. Yes.

13 Q. And do you discuss this article and other articles in
14 the body of your report?

15 A. Yes.

16 Q. And is there controversy in the field about the concept
17 of hebephilia?

18 THE COURT: Well, again, I think this is off the
19 plate, and the First Circuit did decide that it's a viable
20 mental illness.

21 MR. GOLD: Your Honor, the devil's in the details.
22 With all due respect to the First Circuit, they're not
23 doctors; they're judges.

24 THE COURT: I know, but it's the law of the case
25 that it's -- in other words, I don't want a Daubert kind of

1 challenge to whether or not you can come up with paraphilia
2 NOS hebephilia.

3 Whether he qualifies may be a different thing; I don't
4 know whether you can continue to challenge that. I don't
5 remember exactly how the First Circuit worded it, but I
6 don't want a Daubert challenge as to whether or not the
7 diagnosis is even valid.

8 MR. GOLD: Well, it's all of a piece, your Honor;
9 that's what I would say. Dr. Prentky, I think takes the
10 position that --

11 THE COURT: I know but I don't want to waste time.
12 If you want to challenge the First Circuit's opinion, move
13 for reconsideration, but at least paraphilia NOS
14 (hebephilia), that's why they remanded it because
15 Judge Tauro said it wasn't an illness.

16 MR. GOLD: That's right.

17 THE COURT: So that's the law of the case; it's an
18 illness. So now maybe he -- now, the parameters of the
19 illness, maybe he doesn't qualify somehow; that's fair
20 enough, but I don't want to go through whether Blanchard
21 is right or not.

22 MR. GOLD: Your Honor, I think we can -- we're
23 going to move this through. As your Honor noted when we
24 started the case is that the serious difficulty questions,
25 some of these cases haven't been assessed out the legal

1 issues. It's intimately related not to just to, you know,
2 the fact of a Diagnosis A or B, but the quality and nature
3 of it, so I think we need the testimony --

4 THE COURT: Fine, but I'm just saying right now I
5 am not going to be reversing the First Circuit.

6 MR. GOLD: No, and I don't see that --

7 THE COURT: Okay.

8 MR. GOLD: -- down the line, but in order to simply
9 understand and have the context of what -- the opinions in
10 context for an understanding.

11 THE COURT: All right, but let's move it. I'm not
12 spending a lot of time on something which undercuts what the
13 First Circuit decided.

14 MS. SERAFYN: Your Honor, just for the record, we
15 also believe that the First Circuit actually decided that
16 the government did prove that Mr. Carta has hebephilia.

17 THE COURT: Why don't you read the sentence that
18 makes you think that. I just don't remember. I can go back
19 and read it but --

20 MS. SERAFYN: Well, I will; I have the judgment
21 right here. It says: "The matter is remanded for the
22 district court to consider whether the requisite of
23 dangerousness exists," so we believe coupled with the
24 First Circuit's opinion which I have also that --

25 THE COURT: I don't remember, and I'm not going to

1 take the time right now to remember.

2 MR. GOLD: We'll hash it out in the papers, your
3 Honor, so I just want to get in the evidence, and then
4 we'll move beyond it.

5 I just want to say one thing with respect to that which
6 is that, you know, normally, and I've been thinking about
7 this a little bit, but, normally, we get a remand from
8 the First Circuit about some issue in a case determining
9 something that's a historical fact; but what we're
10 determining in these types of cases is present mental
11 state. If Judge Boudin diagnoses my client in June of
12 2010, and then there's a sea change in what the American
13 Psychiatric Association is doing, then I think it's --

14 THE COURT: Sure.

15 MR. GOLD: -- relevant to this.

16 THE COURT: If there's new evidence.

17 MR. GOLD: Right.

18 THE COURT: But, if anything, it seems to be moving
19 the other way.

20 MR. GOLD: Right.

21 THE COURT: But go ahead.

22 Q. And you made note of this controversy in your report,
23 Dr. Prentky?

24 A. Yes.

25 Q. And you cite several articles that are referenced or

1 you reference several articles in your report?

2 A. Yes.

3 Q. And can I refer you to what's been premarked as
4 Exhibits 36 and 37, if I'm not mistaken, the two articles
5 there; maybe you can assist me, Dr. Prentky?

6 A. 37 is the Frances/First paper.

7 Q. And the other one?

8 THE COURT: Are these post the First Circuit opinion?

9 MR. GOLD: These are post the First Circuit opinion.

10 A. 38 is that what you said?

11 Q. 38.

12 A. That's the Franklin paper.

13 Q. So is the Franklin paper --

14 THE COURT: I haven't got those, right?

15 Q. Is the Franklin paper among the literature that you
16 cite as germane to the issue of hebephilia in your report?

17 A. That I cite with regards to the controversial nature of
18 the diagnosis of hebephilia, the answer is yes.

19 Q. Yes.

20 MR. GOLD: Your Honor, I'd seek to move the
21 Franklin article into evidence.

22 THE COURT: Have you been shown it before?

23 MS. SERAFYN: No, we hadn't.

24 THE COURT: All right. So what's your position?
25 Are you sick?

1 MS. SERAFYN: I am, your Honor. I'm sorry, I seemed
2 to have lost my voice. Dr. Prentky does cite this article
3 in his report, but we hadn't been provided with it
4 beforehand.

5 THE COURT: Why don't you read it over lunch and
6 see if you object?

7 MS. SERAFYN: Okay.

8 THE COURT: I'll mark it for ID at this point; it
9 would be useful because, you know, they don't know this
10 stuff.

11 MR. GOLD: Well --

12 THE COURT: Why wasn't it given to them?

13 MR. GOLD: That's an oversight, your Honor. It was
14 cited in the report; I kind of considered it.

15 THE COURT: I know, but they're not reading
16 everything, so I'll mark it -- what are we marking it for
17 identification?

18 THE CLERK: Do you want me to give it letter A or
19 did you use that -- B?

20 MR. GOLD: I don't know whether it's --

21 MS. SERAFYN: B.

22 THE CLERK: B.

23 (Respondent's Exhibit B marked for identification.)

24 Q. And what's been premarked as Exhibit 36, what is this?

25 A. Franklin's already marked as Exhibit 38.

1 Q. I'm sorry, 37?

2 A. 37 is marked as -- that's Frances/First.

3 Q. And --

4 THE COURT: You haven't seen this either?

5 MS. SERAFYN: No, Mr. Gold delivered it to us last
6 night at 5:00. I believe that this is cited in Dr. Prentky's
7 report, but we do object to this one.

8 THE COURT: If it's not cited, sustained.

9 Q. Well, your Honor, let me ask it this way: Dr. Prentky,
10 are you aware in this month of the ongoing controversy; do
11 you keep abreast of developments in the field?

12 A. Yes.

13 Q. And has there recently been a new commentary which has
14 been issued about the hebephilia controversy?

15 A. In the AAPL bulletin.

16 Q. What is the AAPL bulletin?

17 A. The Journal of the American Association of Psychiatry
18 and the Law current issue 2011.

19 Q. And who is the author of that commentary?

20 A. Two psychiatrists, one by the name of Frances and the
21 other by the name of First, Michael First.

22 Q. And who are those psychiatrists?

23 A. Michael First is a practicing academic psychiatrist in
24 Columbia, I believe; and as far as I can recollect, Frances
25 is retired. I believe that he was an academic psychiatrist

1 at Duke University way down south.

2 Q. Dr. Prentky, what is their relationship to the DSM-IV?

3 A. They are both a part of the panel that considered
4 paraphilia. Certainly, Michael First is; I'm not sure if
5 Frances is still affiliated with it.

6 Q. Well, when you say still is a part --

7 THE COURT: All right. Has the DSM -- I know they
8 were considering this issue, have they come out yet with
9 their revised --

10 THE WITNESS: No.

11 THE COURT: -- standards?

12 THE WITNESS: No.

13 THE COURT: And there was controversy there, right?

14 THE WITNESS: Correct. The DSM-V is not due out
15 until 2013 at the earliest, as far as I understand.

16 Q. Did Dr. Frances and Dr. First at the American
17 Psychiatric Association issue a published critique of the
18 criteria, the proposed criteria for DSM-V within the last
19 month?

20 A. Well, are you talking about the article that just
21 appeared in the AAPL?

22 Q. Yes, Dr. Prentky.

23 A. Yes, of course.

24 Q. And is that evidence of the ongoing controversy
25 regarding this diagnosis in the field?

1 A. This is clear.

2 THE COURT: Well, what's "this diagnosis"?

3 THE WITNESS: Your Honor, hebephilia as a diagnosis
4 is highly controversial. I believe it's fair to say that,
5 clearly, hebephilia cannot be understood to be broadly
6 accepted by practitioners in the field.

7 THE COURT: Excuse me, but that's not the diagnosis
8 that I'm talking about. That's not in the DSM, as I
9 understand it people have taught me.

10 The diagnosis we're talking about is Paraphilia Not
11 Otherwise Specialized and then there are various criteria,
12 so it's not the hebephilia, if I can use the word
13 free-standing; that you all have taught me that it's typical,
14 not atypical to be attracted to post-pubescent adolescents;
15 the issue is whether you act on it and whether it affects
16 major life -- I forget; you probably know this by heart,
17 but whether it affects your life in a significant way,
18 when you act out on it.

19 I just recently did an opinion on this ... so the
20 question is: is it not accepted in the literature that you
21 can have a paraphilia NOS that's characterized by hebephilia
22 if those other criteria are met?

23 THE WITNESS: NOS, as you know, is a wastebasket
24 category. It's intended to include the myriad paraphilias
25 that are not listed.

1 THE COURT: Right.

2 THE WITNESS: You could use that NOS category for
3 any paraphilia that perhaps the community widely recognized
4 as being a legitimate paraphilia; for instance, bestiality
5 or zoophilia.

6 THE COURT: Well, what about raping a 13-year-old
7 consistently and you can't stop; I'm not saying he did that.
8 You're attracted to 13- and 14-year-olds; they're
9 post-pubescent, and you keep attacking them, you know, with
10 oral sex, anal sex, all the disgusting things you hear about
11 it; you keep doing it and it's affected your life because
12 you can't stop and you keep going to jail, would that be a
13 paraphilia NOS hebephilia?

14 THE WITNESS: I attempted to diagnose him with
15 paraphilia NOS hebephilia initially; this is what I had in
16 mind, and I found as I continued to scrutinize the case in
17 the way that I formulated this diagnosis, I take a somewhat
18 nuanced view of what hebephilia means.

19 I found that if there is to be this nexus, this linkage,
20 with serious difficulty, that that nexus simply wasn't
21 there. It was not possible for me to conclude that
22 because of this hebephilia, he had serious difficulty
23 refraining from sexual misconduct; that's the bridge, the
24 linkage, that I could not make.

25 THE COURT: So I guess we intellectually reach this

1 in two steps: one is whether or not it's possible to have,
2 possible but would it be reliable, I guess is a better word,
3 to use, whether it's a reliable diagnosis that someone might
4 have paraphilia NOS hebephilia if they met the various
5 criteria; would that be a reliable diagnosis in your field?

6 THE WITNESS: It would be a reasonable, legitimate
7 diagnosis for me. However, I hasten to add that I
8 recognize that many of my colleagues would never reach such
9 a diagnosis; they would never consider such a diagnosis
10 because they consider it to be effectively an afterthought.
11 A psychiatrist by the name of Dr. Green wrote a rather
12 remarkable piece about this same subject.

13 THE COURT: Somebody who continued to offend, not
14 just an attraction, and he said it wasn't a mental illness?

15 THE WITNESS: What Green said in this rather
16 interesting piece entitled: Sexual Preference for
17 14-year-olds as a Mental Disorder: You Can't Be Serious,
18 with two exclamation points.

19 THE COURT: That's fair enough, but what about --
20 I'm not talking about sexual preference or attraction; I'm
21 talking about acting on it.

22 THE WITNESS: Because the question is -- this is
23 sort of a gray zone of whether you can act on a sexual
24 preference or a sexual desire, sexual interest, whatever
25 word you want to use, for individuals in this gray zone

1 and have that be considered a mental disorder independent
2 of the particular jurisdictional authority over the age
3 that dictates whether or not this is criminal ... because,
4 obviously, that will change from state to state.

5 So independent of the legality of it, these
6 psychiatrists seem to be commenting on whether at this
7 point in time sexual interest and sexual acting out on that
8 interest involving sexual objects in the age range of, say,
9 14 to 17 or 16 would be considered a mental disorder.

10 THE COURT: No, I'm talking about ages 11 to 12 to
11 14?

12 THE WITNESS: There's a long history here. We can
13 go back to roughly 1924, I believe, when, when Krafft-Ebing
14 first proposed the diagnosis that we would call hebephilia,
15 he called it ephebophilia, but, essentially, it's what we
16 would call today hebephilia, and that goes back, as I said,
17 to 1924.

18 THE COURT: What did he say?

19 THE WITNESS: That he considered it a mental disorder
20 back then. You can come forward to say many years later to
21 the writings of Glueck in the 40s, I believe, and Glueck
22 used exactly the same age range that Ray Blanchard does in
23 his paper, roughly 11 to 14, and he referred to hebephilia
24 at this point.

25 THE COURT: Did he say it was a mental disorder?

1 THE WITNESS: That's how he characterized it but --

2 THE COURT: Excuse me. Somebody coughed.

3 THE WITNESS: Yes, that's how he characterized it,
4 but, again, let me hasten to add there was no DSM then.

5 THE COURT: Sure, but I'm just saying at this point
6 you're the expert up here; you've been in front of me many
7 times: would it be generally accepted in your profession,
8 while there may be some people who disagree, that if you
9 continue to act out and have oral or anal sex with
10 postpubescent adolescent boys ages 11 to 14, and you were
11 substantially older ... you know, what was it like
12 15-year-olds, that that could be reliably diagnosed as
13 paraphilia NOS if it interfered with your significant life
14 functions?

15 THE WITNESS: As I said before, I am comfortable
16 going there; I've gone there before. I have attempted
17 contemplate diagnoses along those lines myself, but I,
18 however, have to reflect back to you that there is clearly,
19 as I implied, a level of controversy around this issue.

20 THE COURT: Fair enough. I mean, experts in the
21 field do disagree on that; I mean, I understand that this
22 has been a controversial area, but I'm just saying from
23 your point of view, you're the expert; it's at least, you
24 know, generally accepted by some serious portion of your
25 profession that that would be a reliable diagnosis, not by

1 every single person?

2 THE WITNESS: Yes, I believe so, but I think that's
3 what's critical, your Honor, is the issue of whether this
4 problem, I don't think anyone, including Dr. First or even
5 Dr. Green, would say that the kind of individual that
6 you're describing doesn't have a problem, doesn't have some
7 psychological problem ... I think what they might say is
8 it's not clear that that best be characterized as a
9 paraphilia.

10 What they might say, and, again, I have never asked, but
11 what they might say is that it's a failure in some adult
12 social adaptation.

13 THE COURT: Could you call it a mental disease or
14 disorder? Well, what's the statutory word?

15 MS. PIEMONTE-STACEY: A mental illness, abnormality,
16 or disorder, your Honor.

17 MR. GOLD: A serious mental illness.

18 THE COURT: All right, fair enough. That's the
19 statutory term.

20 THE WITNESS: I guess for me the word "serious" would
21 come into play if you acknowledge that in what
22 you're actually engaging in, the behavior was criminal,
23 and it kept getting you into trouble, and you couldn't
24 stop; if it rose to that level of gravity, then I guess I
25 would call it serious.

1 THE COURT: But serious mental illness?

2 MS. SERAFYN: Abnormality or disorder.

3 THE COURT: Would it be?

4 THE WITNESS: If it rose to that level of gravity,
5 then I guess I would consider it a serious problem.

6 THE COURT: All right. So that's in the abstract;
7 I'm not tying you down to Mr. Carta, so now we can jump into
8 Mr. Carta.

9 Q. Dr. Prentky, what diagnosis did you consider when
10 assessing Mr. Carta?

11 A. Paraphilia NOS hebephilia.

12 Q. Did you consider any other diagnoses as potentially
13 applicable to the case?

14 A. Not that are potentially applicable, and clearly one
15 could try to diagnose him of having antisocial personality
16 disorder, but I don't regard that as totally relevant.

17 Q. Now, with respect to the paraphilia NOS hebephilia, how
18 do you -- how did you go about diagnosing or analyzing that
19 question in this case?

20 A. I posed the question in my report as to the evidence
21 that could be brought to bear that this was a, well,
22 defensible diagnosis, and I have a list of those points
23 that seemed germane, that seemed to speak to that ultimate
24 conclusion, and I list them in my report. Do you want me to
25 go through it?

1 Q. If you could describe the evidentiary basis, and the
2 analysis.

3 A. He has disclosed, and this evidence comes primarily
4 from his reports, that he had oral sex with a 15-year-old
5 nephew when he was 21. He disclosed that he had oral sex
6 with an intoxicated 13-year-old when he was 28. He had oral
7 sex with an intoxicated 17- or 18-year-old when he was 28.
8 He engaged in sexual activity with a 13-year-old on many
9 occasions; he estimated 30 or 40 occasions when he was 30 or
10 31 years old.

11 Q. Over what time period, if you know?

12 A. Well, as I vaguely recall, a period of roughly six
13 months it was extended. I don't remember exactly --

14 Q. Okay.

15 A. -- but that's to the best of my recollection. On
16 another occasion he engaged in sexual activity with a 13-
17 and a 17-year-old when he was in his 30s.

18 On another occasion he engaged in sexual activity with
19 three 16-year-olds that he met in chat rooms when he was
20 33; and then, of course, finally, we know that he lived
21 with Frederick who was 17 and they had a relationship for
22 roughly six months; and, lastly, he had oral sex with
23 Frederick's 15-year-old brother when he was -- when
24 Mr. Carta was 39 years old. He further reported being
25 sexual with Seth, his daughter's 17-year-old boyfriend;

1 that is, Vanessa's boyfriend.

2 Lastly, one might conclude if one was being entirely
3 inclusive of everything that we know from what he has shared
4 with us that his wife was 17 when he met her; he was 24.
5 Again, there was roughly a seven-year age difference.
6 She was obviously of legal age, but there was roughly a
7 seven-year age gap ... so in my report I state that in total
8 he has reported being sexual with 13 teenagers: three that
9 are 13 years old, one 15-year-old, four 16-year-olds, and
10 five either 17- or 18-year-olds.

11 Of the three -- I'm sorry, of the 13 teenagers, three --
12 the three 13-year-olds would fall within this general age
13 range, whatever it is, whether you're using the original
14 Glueck or the more recent Blanchard age range of 11 to 14
15 ... so that is the evidentiary basis for consideration of
16 whether a diagnosis of hebephilia is defensible.

17 When I asked him to simply report to me, to describe
18 for me what it is that attracts him the most ... not
19 surprisingly, he spoke about young adolescents, good-looking
20 guys, as he called them or referred to them, that are thin,
21 that are youthful-looking; they have a lot of energy, the
22 body type that he described would be essentially a pubescent
23 male in the age range of 15 to 20. That's probably a fair
24 and complete characterization of what his actual sexual
25 preference is.

1 Q. Why doesn't that statement lock him into a paraphilia
2 diagnosis?

3 A. It's clearly outside the range of what has in the past
4 been reported to be a general range for hebephilia. If I
5 use that range, and I'm not going to create my own
6 literature here, my own scholarship ... so if I rely upon
7 those scholars of the past who have written about
8 hebephilia, who have described it as a diagnostic entity, a
9 mental disorder, trust and use their guidelines of an age
10 range that is in early adolescence somewhere in the
11 neighborhood of 11 to 14.

12 THE COURT: That's when you referred to me going
13 back 100 years or so?

14 THE WITNESS: That's correct.

15 THE COURT: Everybody's pretty consistent in that
16 definition?

17 THE WITNESS: That's correct.

18 Q. Dr. Prentky, why then did you not diagnose Mr. Carta as
19 suffering from this condition that you've described if he's
20 got three victims who are 13 years old?

21 A. Again, the issue here is the most defensible diagnosis
22 that I can offer the Court, if I suggest that Mr. Carta is,
23 in fact, a hebephile, by that diagnosis I am locking him
24 into a sexual preference age that I find questionable.
25 We're talking about 13 teenagers, three of whom would fall

1 in this questionable range.

2 The overwhelming weight of the evidence seems to be
3 that his preference is for young adolescents who are older
4 than that; as I said, in the age range roughly of 15 to 20;
5 and if you look at all of the individuals that we're talking
6 about, indeed, 9 of the 13 were either 15, 16, or 17 years
7 old, and one apparently was 15 ... I feel uncertain
8 ascribing that diagnosis to him based on relatively weak
9 evidence, but it's clear in this case that the diagnosis
10 is complex and has resulted in obviously some degree of, you
11 know, disagreement among the experts who have evaluated him.

12 I've tried to walk a middle line. I've tried to
13 consider a diagnosis that I thought was potentially
14 appropriate and found that I simply wasn't comfortable
15 concluding that diagnosis based on the simple weight of the
16 evidence.

17 Q. Dr. Prentky, is age a proxy for how someone looks, if
18 you understand that question?

19 A. I don't.

20 THE COURT: I don't.

21 Q. Well, when we're talking about age, is it possible
22 that someone is -- who is young is fully physically
23 developed?

24 A. Obviously, the age of psychosexual development varies
25 enormously.

1 Q. Well, could you find a 13-year-old who looked like an
2 18-year-old?

3 A. Yes, of course.

4 Q. Could you find 18-year-old whose maturity was not so
5 fast and looked like a pubescent person?

6 A. I'm sure.

7 Q. So in that context is age simply a proxy for
8 understanding some level of sexual development when you
9 think about the diagnosis?

10 A. Age is a relatively crude measure when we're talking
11 about this gray area of adolescence. Age is much easier
12 when we're talking about children or we're talking about
13 adults; it only becomes highly problematic when we're
14 talking about adolescence.

15 Q. Well, Doctor, you've heard testimony in this case that
16 we don't have any doctor evidence of how the 15-year-old
17 victim looked; is the same true of all the victims in this
18 case?

19 A. I certainly have not seen any images of any of these,
20 and many of these are, of course, simply the result of
21 Mr. Carta's own self-report so, obviously, we have nothing
22 to look at. We don't know how they appeared or what their
23 physical development was.

24 Q. Now, one of the 13-year-olds that you identified
25 Mr. Carta continued to relate to that person or, you know,

1 in an offending situation for a period of time; obviously,
2 that person would have continued to develop, is that fair
3 to say?

4 A. Absolutely, but, of course, it depends what the time
5 frame was, and, again, I believe on a number of occasions
6 it was estimated to be 30 to 40 ... if the time frame was
7 perhaps as long as a year, then there might have been
8 obviously some change in development. It's less likely if
9 the time frame was as short as say six months.

10 Q. Now, where does the 11 to 14 that you rely on come
11 from, that age range, this literature that you describe?

12 A. As I said, it depends on the historical teaching. If
13 you want to go back to the writings of Glueck or back in the
14 40s, he uses -- I believe he's the first one to use that
15 same age bracket, 11 to 14, that Dr. Blanchard mentions in
16 his paper.

17 Q. All right, but, Dr. Prentky, you have, well --

18 THE COURT: So how much longer?

19 MR. GOLD: I'm going to move now into the risk
20 element.

21 THE COURT: I just need to get some sense of this
22 because we've got today, and how much longer do you have?

23 MR. GOLD: Well, I think 45 minutes to one hour;
24 that's what I think. We've got this prong. I just think
25 the testimony is --

1 THE COURT: We need to break now. I have a 2:00.
2 We can come back here at 2. We should come back here at
3 maybe at 2:15, all right, and then you're going to finish
4 at 3.

5 I'm just going to cut it off because this keeps going
6 longer and longer. You'll probably want some redirect? I
7 need to finish this today. I assume that you're all
8 available to come back Monday?

9 This took forever, forever, and I have to give a fair
10 opportunity to everyone. If I have extra time on redirect,
11 I'll let you use it, but we're going to finish it today.

12 You remember at the last minute we had this all booked
13 up and Mr. Carta canceled because his back hurt him and so
14 then we've been grappling for the last two months. Now,
15 this is on the record trying to get days, and now it's
16 significantly longer than you expected at this point.

17 You know, I've seen Dr. Prentky before; he speaks
18 deliberately, and we just need to finish it today.

19 MR. GOLD: But what is the Court proposing?

20 THE COURT: We can come back at 2:15, you're going
21 to finish at 3, and then I have a pretrial that will go
22 roughly to 3:15, and then you'll have the remainder of
23 the day, leaving us maybe 15 to 20 minutes for redirect.
24 That's what I'm proposing.

25 MR. GOLD: Your Honor, I counter propose that. I

1 understand what you're saying, and we want to move it too,
2 but we also don't want to be in the position where we're
3 drafting and regretting that we didn't get certain things
4 into the record.

5 THE COURT: Well, you spent an hour on credentials
6 when everybody agrees he's qualified; he's one of the most
7 qualified guys out there, so I don't know why we used that
8 time that way. I actually used him myself as an independent
9 expert; he's qualified.

10 MR. GOLD: But, your Honor --

11 THE COURT: You know what, I've got to meet someone
12 downstairs. We'll see you at 2:15.

13 THE CLERK: All rise.

14 (Whereupon, a brief lunch recess convened.)

15 THE CLERK: Counsel can come forward in the next
16 case.

17 MR. GOLD: Did you say come forward?

18 THE CLERK: No, I meant set up.

19 BY MR. GOLD:

20 Q. Good afternoon, Dr. Prentky.

21 A. Good afternoon.

22 Q. How did you answer the question of whether Mr. Carta
23 would have serious difficulty refraining from sexually
24 violent conduct or child molestation in the future?

25 A. I completed or at least attempted to complete the

1 structured actuarial scale referred to as the Static-99,
2 and I followed that up by completing a non-actuarial
3 empirically-guided risk assessment referred to as the
4 SVR-20.

5 Q. When you say you tried to complete the Static-99,
6 could you explain that?

7 A. The history here, as we've discussed it this morning,
8 is complex, and, particularly so as it pertains to the
9 guidelines for completing the 10 items on the Static-99.
10 I worked under the assumption that the governing offense
11 was the possession of child pornography.

12 However, that is impermissible as a governing offense;
13 with the Static-99 there needs to be, it's referred to as
14 Category A offense, a battery sexual offense. So if the
15 other evidence that we had brought to bear by a self-report
16 is used to justify the scoring of the Static-99, then we
17 would encounter the problem that a self-report is understood
18 to be impermissible in the completion of the five criminal
19 history variables on the Static-99.

20 Q. Now, Dr. Prentky, are you right now talking about a
21 discussion of the coding rules of the Static-99 which is
22 contained in your report?

23 A. Yes.

24 Q. And what does that discussion lead you to in terms of
25 the Static-99 in this case, did you employ it?

1 A. I attempted to, in part, because it has been used by
2 other experts in this case, and I wanted there to be some
3 common ground ... so I tried to find different ways in
4 which one could interpret Mr. Carta's criminal history such
5 that it would be appropriate to use the Static-99 given the
6 2003 guidelines.

7 Q. But do you believe those guidelines actually preclude
8 the scoring of the Static-99 in this case?

9 A. I believe that the guidelines make it highly
10 problematic; that, as I said, it depends on how we construe
11 his criminal history, and the pivotal issue here I believe
12 is not that the governing offense is a Category B offense,
13 child pornography, but that the Static-99 does not allow us
14 to rely on self-report for coding the criminal history
15 variables.

16 Q. Now, how did you do your risk assessment then; did you
17 use another instrument?

18 A. That's one of the reasons that I also completed the
19 SVR-20, Sexual Violence Risk 20. It's not an actuarial
20 scale; in that, there are no life tables associated with it.

21 It is referred to as an empirically-guided risk
22 assessment. It is similar to the Static-99 in that all
23 of the items are based on or written on by sufficient
24 scientific literature such as to justify their use as
25 risk predictors.

1 Q. And for the record I'm putting up on the document
2 viewer Exhibit 34, Page 16, which is Page 16 of your
3 report, and in the appendix you set up the coding that you
4 did for the SVR-20; is that what's on the screen?

5 A. Yes.

6 THE COURT: Is that the one you developed or --

7 THE WITNESS: No. No, your Honor. I developed an
8 instrument for juveniles.

9 THE COURT: Just for the juveniles?

10 THE WITNESS: Correct.

11 Q. But the SVR-20, could you briefly describe for the
12 Court where that came from and how long it's been around and
13 whether it's empirically validated in the literature?

14 A. The SVR-20 has been used for, let me see, approximately
15 13, 15 years now. It was developed in Canada roughly, I
16 would guess, two years prior to the Static-99.

17 It was developed by a number of well-respected, highly
18 esteemed forensic researchers: Webster, Hart, Bore and
19 others. It has been certainly the subject of ample
20 empirical research.

21 It is not nearly as commonly used in the United States
22 for these SVP or SDP hearings so we don't hear about it as
23 much, but there certainly is an empirical basis for it; and
24 in several studies that have compared the SVR-20 to the
25 Static-99, the SVR-20 is at least as good in terms of its

1 predictive performance as the Static-99, and in at least one
2 or two studies it actually is better.

3 THE COURT: Were these studies in peer-reviewed
4 journals?

5 THE WITNESS: Yes.

6 THE COURT: Is this a test that's generally accepted
7 in the forensics -- what would you call your area of
8 expertise: forensic psychology?

9 THE WITNESS: Forensic psychology.

10 THE COURT: Is this generally accepted by forensic
11 psychologists?

12 THE WITNESS: The SVR-20?

13 THE COURT: Yes.

14 THE WITNESS: Absolutely. One of the authors of
15 the SVR-20, Dr. Hart was past president of the forensic
16 division of the American Psychological Association.

17 THE COURT: All right. Thank you.

18 Q. Now, there are a list of factors here, and these are
19 the factors you were talking about as individual factors
20 being supported in the research as associated with risk of
21 recidivism or reoffense?

22 A. Yes.

23 Q. Now, without going through them individually, but
24 could you tell us what your scoring of the SVR-20 told you
25 in Mr. Carta's case and how it contributed to your opinion?

1 A. Well, it's fairly dramatic. You can see under the
2 cluster of risk variables referred to as psychosocial
3 adjustments that he has rated as present, so a yes on
4 virtually every single one of those items, and those items
5 reflect overwhelmingly an antisocial lifestyle. Items such
6 as: supervision failure, nonviolent offenses, nonsexual
7 violent offenses, employment problems, relationship
8 problems, substance abuse problems; all of those items are
9 marked in the affirmative.

10 There are two additional items that, on that same scale,
11 that are -- don't really reflect criminal history, but
12 they're also marked in the affirmative, and that's that he
13 was a victim of child abuse and sexual deviation ... so
14 all tolled, on the psychosocial adjustment scale, I came up
15 with a score of 17 out of 20, which is an extraordinarily
16 high score, and it reflects his -- what we know about
17 Mr. Carta; namely, his antisocial lifestyle.

18 Q. And how does this result, how does it inform your
19 opinion in this case; what is the SVR-20 telling you and
20 telling us?

21 A. If we take a look at this second set of items, risk
22 factors on the SVR-20 clustered under the large heading of
23 Sexual Offenses, the items that are listed here are high
24 density sexual offenses, and I coded that actually in a
25 question mark; I wasn't sure exactly how to code that so I

1 coded it as a 1.

2 THE COURT: What does that mean?

3 Q. Could you describe how the coding works, what a 2, a 1,
4 and a 0 and a question mark means?

5 A. Well, the 0, 1, 2 works exactly the same way here as it
6 does for the Static-99; namely, if you're confident that the
7 risk factor is absent, you code it a zero.

8 If you're confident that the risk factor is present,
9 then you code it a 2; and if you're somewhat unsure, it's
10 like a gray area, the data are somewhat ambiguous, you might
11 code it a 1.

12 THE COURT: Well, what does density mean?

13 THE WITNESS: A concentration, a very high
14 concentration of sexual offenses or sexual offending. Many,
15 many sexual offenses perhaps concentrated in a relatively
16 short time period.

17 THE COURT: So if somebody rapes a 13-year-old 30 or
18 40 times in six months, what's that considered?

19 THE WITNESS: That would be probably considered high
20 density, but for the fact that we have the same problem
21 here that we have with the Static-99; that for most of these
22 risk assessment scales a determination of criminal history
23 rely on official documentation, so I don't escape that
24 problem by using this scale. However --

25 THE COURT: So do they have to be convictions, is

1 that what you're saying?

2 THE WITNESS: They have to be adjudicated. They
3 have to be adjudicated. They could be a charge or an arrest.

4 THE COURT: But they can't just be a self-report, is
5 that how this works?

6 THE WITNESS: Yes. Now, I tried to evaluate these
7 even independent of that using self-report, and that's why
8 I think that I initially coded that a 1 because I really
9 wasn't sure.

10 It was clear to me as I coded the other items that even
11 using self report, it wasn't possible to code them in the
12 affirmative. Things like physical harm to victims, again
13 the way -- I don't have the manual here -- but the way that
14 the criteria are indicated for the coding of those items
15 uses webbings and threats, escalation and frequency or
16 severity, extreme minimization or denial ... all of those
17 items that I coded 0 or no, and that was even taking into
18 account the fact that the data I was working with were all
19 self-reported.

20 THE COURT: Well, if you counted non-convictions
21 with self-reports in the first line, would that give it a 2?

22 THE WITNESS: Yes, that would be a 2.

23 THE COURT: If it kind of acts or supports or
24 condones as 2 points, at some point somewhere I read he
25 wasn't sure it was a problem 'cause somebody -- I believe a

1 13-year-old consented, does that qualify?

2 THE WITNESS: For?

3 THE COURT: Support of?

4 THE WITNESS: The very last line, attitudes that
5 support or condone?

6 THE COURT: Yes.

7 THE WITNESS: Well, this is the attitudes that he
8 was reflecting to me when I interviewed him.

9 THE COURT: Yes, that's what I think I'm
10 remembering.

11 THE WITNESS: Yes, so, and that's why, again, he
12 clearly did not share with me attitudes that we would
13 characterize as distorted. He wasn't giving me blatant
14 cognitive distortions that justified or minimized the
15 behavior. In fact, as I think I shared this morning, he
16 actually was rather embarrassed.

17 THE COURT: All right. So that would stay 0 to 1?

18 THE WITNESS: Yeah, I think that's legitimate.

19 THE COURT: I'm trying to just get it.

20 THE WITNESS: I think that that's a reasonable
21 coding. I tried to be conservative, but I think that this
22 is a reasonable coding; and no matter how we tweak it,
23 you can see that the overall score is remarkably low.

24 You have an overall score of 1 or 2, 2 if you like out
25 of 14, compared to 17 out of 20 for the psychosocial

1 adjustment scale.

2 THE COURT: Well, suppose you were to say it was 2
3 to 3 out of 14, is that still considered low?

4 THE WITNESS: The SVR-20 requires the user to make
5 that judgment. Unlike the Static-99, there are no a priori
6 risk categories.

7 The Static-99 has these little boxes: low, low moderate,
8 moderate, you know, high, and so forth; the SRV-20 doesn't
9 use that. The SVR forces you to incorporate the results
10 of the risk assessment scale with everything else that you
11 know and to make it a part of a comprehensive risk
12 assessment ... so how would I characterize that?

13 You know, I would certainly say that 17 out of 20,
14 obviously, is high, and I think I would certainly say that 2
15 or even 3 out of 14 is low, but it's not because the manual
16 says I have to say that.

17 THE COURT: So you've done thousands of these, so in
18 your experience?

19 THE WITNESS: In my experience that's extremely low
20 for a sex offender, yes. It's not what you typically see for
21 a sex offender.

22 Q. And, Dr. Prentky, can you interpret these results for
23 the Court in the context of your overall risk assessment of
24 Mr. Carta?

25 A. The conclusions that I draw at the end of my analysis

1 that bear on my opinion about the ultimate conclusions
2 having to do with risk appear on the last page, and I list
3 them as -- the fact that I keep in mind that there's no
4 documented evidence, documented evidence, of a sexual
5 offense until the age of 40, I appreciate that we have much
6 self-reported evidence, but there's no documented evidence.

7 The second point is that the prison sentence resulting
8 from his convictions on charges related to risk of injury
9 to a minor and transportation of child pornography is his
10 first significant sanction and the first sanction for a
11 sexual offense.

12 It's the first lengthy incarceration in his entire
13 criminal career. He has been incarcerated before, but
14 typically for very small lengths of time. This is the
15 first lengthy incarceration of this man; and as I said, the
16 first one for a sexual offense.

17 The third point is that after he was convicted of
18 transportation of child pornography and criminal forfeiture,
19 he was released pending sentencing and was in the community
20 for half a year without any known infraction.

21 The fourth point is insofar as his disclosures of
22 sexual involvement where teenage boys are concerned, there
23 has never been an illegal response; he's never been
24 charged, arrested, or sanctioned for any of these
25 self-disclosed offenses; and that's despite the fact that

1 as we know looking at his lengthy record, he has been
2 arrested and sanctioned numerous times for his many
3 nonsexual crimes, typically, as I said very brief periods.

4 And, finally, the last point that I arrive at is that,
5 of course, the SVR-20 clearly suggests that Mr. Carta is, in
6 fact, a true, although it's based on his behavior, a generic
7 criminal and a criminal lifestyle, and he is, in fact, at
8 high risk for general criminal activity; that's inescapable,
9 but by contrast, there is contrary evidence of risk gleaned
10 from the sex offender specific risk factors that I looked at
11 here.

12 Q. Dr. Prentky, why is it important to your opinion that
13 this is the first serious sanction that he's received and
14 the first sanction for a sex offense?

15 A. It is fundamental to our understanding of the
16 importance, the profound importance, of a risk variable for
17 prior sexual offenses. It used to be clearly articulated
18 in the original manual for the Static-99 that if an
19 individual has transgressed, been arrested, and been
20 seriously sanctioned by the court, and then proceeds to
21 ignore those sanctions and elects to continue the kind of
22 behavior that resulted in those sanctions, that that
23 clearly speaks to some kind of serious difficulty ...
24 whatever words we want to use, whatever you want to attach
25 to it. There's something there that suggests that the

1 sanction is relatively meaningless in terms of containing
2 and controlling the individual's behavior, and, hence, the
3 notion of prior sexual offenses becomes quite important.

4 Q. And is reoffending after a serious sanction behavioral
5 evidence that you have seen in other cases of this nature?

6 A. It's not unusual, I guess, in my experience to see
7 people with a long history of repeated involvement with the
8 criminal justice system, repeated tours of duty through a
9 prison system, and they come out and they reoffend, and they
10 come out again and they reoffend again. It's not unusual
11 for people to have a long track record of sexual offending.

12 Q. Now, Dr. Prentky, you've had the opportunity to, at
13 least from a distance, assess the documentary record of
14 Mr. Carta's participation in the Butner treatment program,
15 and earlier today we spoke about the incident toward the
16 time when he withdrew from the program, and there was a
17 comment in those records that he was in cycle at the time
18 of his withdrawal.

19 In your opinion is the withdrawal from treatment at the
20 Butner BOP facility risk relevant; is it relevant to your
21 risk assessment in this case?

22 A. Well, first of all, I have no idea whether or not he
23 was in cycle or not.

24 THE COURT: What does "in cycle" mean?

25 THE WITNESS: Relapse, a form of cognitive

1 behavioral therapy originally developed for use with
2 alcoholics. It requires you to develop what's called an
3 offense cycle, and there are certain -- every offense cycle
4 is tailored to an individual, and there are certain factors
5 in your life, both behaviors and often emotions, events,
6 that lead you down a path that becomes perilously close to
7 another sexual offense.

8 The notion is that you can actually create this kind of
9 cycle events that leads to another offense. Prior to what
10 is called the relapse, in clinical jargon, a relapse would
11 be another sexual offense, we get to things that are called
12 lapses, and lapses are basically the precursors of another
13 sexual offense ... so all of these events leading to lapses,
14 and, ultimately, leading to a relapse form a cycle.

15 I'm rather skeptical; although I don't know; I wasn't
16 his clinician; I wasn't in Butner; I'm somewhat skeptical
17 as to whether it's appropriate to refer to his interest in
18 these young inmates there as being a cycle for the simple
19 reason that if they're adults and he was, in fact,
20 befriending them, sexual with them on the outside, it
21 would not be of a nature that would subject him to arrest
22 and prosecution.

23 In other words, these people are old enough to have
24 made a determination as to whether they wanted to have a
25 consented sexual encounter ... so, I mean, given that

1 obvious consideration that there is an enormous age
2 difference, but the age difference notwithstanding, they
3 are still adults, I'm not sure if it's legitimate to refer
4 to them as a cycle.

5 Q. Now, independent of your interpretation of what went on
6 at that time, is withdrawal from treatment in the way that
7 Mr. Carta did it a risk factor in the literature?

8 A. No. Well, there's no risk factor called withdrawal.
9 There are risk factors that one of which is called treatment
10 dropout, and that has certainly been looked at.

11 There are many other variables that bear on one's
12 commitment and investment in treatment that have certainly
13 been looked at, and, frankly, the literature is very, very
14 clear that however clinically important it may seem to us,
15 and it is clinically important, it has no bearing on their
16 risk to recidivate.

17 If you look at the two major META analyses that Hanson
18 did, you find that things like length of treatment, the
19 correlation with sexual recidivism, the length of treatment
20 is .03; there's no correlation at all; low motivation for
21 treatment .01, negative clinical presentation, which is
22 an overall combination of these clinical variables, the
23 correlation is 0; denial, if you deny your offense, your
24 sexual offense, the correlation is .02, and I've left for
25 last the one item that continues to be commented on. It's

1 called failure to complete treatment.

2 Failure to complete treatment in at least that META
3 correlates to .17. .17 looks like it's larger than .0 or
4 .02, but, remember, we're talking about correlation
5 coefficients.

6 Now, without getting into an any more detailed analysis
7 of what this means, if you were to use that correlation in a
8 regression analysis to predict whether or not this man would
9 reoffend, it would account for less than 4% of a variance.

10 If the correlation was as high as .2, you square the
11 correlation coefficient .2 squared is .04, that's 4% of the
12 variance17 is a small effect.

13 So, although it's been commented upon, it often comes up
14 simply because it's a larger coefficient than .03, but I
15 certainly wouldn't write home about it and I certainly
16 would not want to rest upon it or lean upon it as support
17 as a risk predictor.

18 Q. So in your opinion in this case you do not rely on the
19 withdrawal in treatment as a risk enhancing factor?

20 A. It's hard, counsel ... as recently as, what, 2003,
21 when Hanson presented at the New York Academy of Sciences
22 meeting in New York, he reported that the factor
23 unmotivated for treatment correlated to .01 with sexual
24 recidivism, again, unrelated.

25 Q. Now, Dr. Prentky, are you familiar with the -- you've

1 reviewed the other opinions in this case, correct?

2 A. Yes.

3 Q. Are you familiar with the developments that have been
4 happening with the Static-99 and the Association for the
5 Treatment of Sexual Abusers over the past three years?

6 A. More or less. I don't attend those meetings any
7 longer, haven't in about a decade, but I try to keep up
8 with the developments in the field.

9 Q. Well, is it fair to ask whether it's required of an
10 evaluator like yourself to use the Static-99R, for example,
11 in a case like this?

12 A. Well, I mean, clearly, there's no question that
13 Dr. Hanson would say -- in effect he said to me very
14 clearly through e-mail -- that it's inappropriate for
15 anyone to be using the old norms, so I guess the answer is:
16 if you're going to use his scales, you would have to use
17 the Static-99R and use those norms and/or the Static-2002R
18 that use those norms.

19 Q. Now, why didn't you use these instruments in your
20 assessment in this case?

21 A. Well, we spoke about that earlier. The Static-99R or
22 the Static-99 --

23 Q. So is the reason that you did not use the Static-99 --
24 well, you didn't code the Static-99R in this case, did you?

25 A. The only difference, the only difference between the --

1 if you look at the Static-99 and the Static-99R, the obvious
2 difference is, of course, the norms; but if you compare the
3 two scales, there's minor tweaking of a few items, and the
4 only fundamental change at all is the age variable. That's
5 the only difference. The only substantive difference
6 between the Static-99 and the Static-99R.

7 THE COURT: Now, you've all lost me. It's getting
8 late on a Friday. Did you use the -- did you use one of the
9 static instruments?

10 THE WITNESS: I used the Static-99, yes.

11 THE COURT: Revised, and what was the predictive
12 capability of that? What did it say and what was the risk to
13 reoffend?

14 THE WITNESS: I never completed it, your Honor, but
15 we talked about this briefly earlier. The Static-99
16 requires what's called a Category A offense.

17 THE COURT: All right, so it's going back to that
18 reason?

19 THE WITNESS: Correct.

20 Q. Okay. Now --

21 THE COURT: He did mention that.

22 Q. Dr. Prentky, have you reviewed the other opinions in
23 this case?

24 A. Dr. Phenix and Dr. Bard.

25 Q. And are you familiar with the use of dynamic factors in

1 assessments such as this?

2 A. Yes.

3 Q. And what is your opinion on the use of dynamic factors
4 in assessments of this kind?

5 A. The --

6 Q. Well, if we could take a step back, Dr. Prentky, what
7 are the dynamic factors; what am I talking about?

8 THE COURT: Why are we even doing this if he thought
9 he couldn't do it?

10 MR. GOLD: Well, the dynamic factors, I'm talking
11 about other thing that Phenix does and I'm presenting the
12 situation for the Court by having him talk about what they
13 are.

14 THE COURT: Well, maybe just, did you agree with her
15 analysis, Dr. Phenix's?

16 THE WITNESS: Vis-a-vis this thing called FVA or
17 something like that, is that what you're referring to?

18 THE COURT: Didn't I tell her she couldn't testify
19 because it was produced at the last minute and it wasn't
20 even validated so I think I excluded this opinion.

21 MR. GOLD: But then we opened the door.

22 THE COURT: Not much. No, we didn't. I said no,
23 because she hadn't -- it had just been validated in
24 December if I'm remembering correctly, that what she
25 testified or hadn't even quite yet been validated yet. No,

1 no, come on; we need to finish this. How much longer do
2 you have?

3 MR. GOLD: This is the last piece, but I just want
4 to ask him these questions and then --

5 THE COURT: No, I rejected it. Didn't I reject her
6 opinion on Static -- am I remembering this wrong?

7 MR. GOLD: No, I can explain.

8 THE COURT: All right, go ahead.

9 MR. GOLD: She at the last minute had introduced --
10 remember, we went through this, all this -- really what's
11 happening with the Static-99, you've got to choose these
12 groups now.

13 THE COURT: Right.

14 MR. GOLD: And she said she was using this new
15 instrument which had just been introduced like eight days
16 before the trial and we excluded that and then she said:
17 Well, I can make the same operation by relying on these
18 research-supported dynamic factors and --

19 THE COURT: I see, so you're going back?

20 MR. GOLD: So I'm going back.

21 THE COURT: Fine, but we're not going through the
22 instrument that I said no.

23 MR. GOLD: No, I'm asking him about what she
24 ultimately said she was using to make this operation and
25 then we're done.

1 THE COURT: We're completely done?

2 MR. GOLD: Well, I'd imagine the government has some
3 questions.

4 THE COURT: Right, but you're done? I see the
5 attorneys here for the next case. I'll finish this one and
6 then come back to you.

7 (Whereupon, a brief discussion
8 commenced off the record.)

9 Q. Dr. Prentky, you had occasion as you testified to
10 review both reports by Dr. Phenix where she discusses
11 dynamic factors. What are those dynamic factors in general
12 terms?

13 A. Dynamic risk factors are intended to take us beyond the
14 static risk assessment that is imposed on us by scales like
15 the Static-99. Dynamic risk factors, however, can only be
16 rated reliably when the individual is, of course, in the
17 community and able to engage in all of those behaviors, the
18 very behaviors that the dynamic risk factors are intended to
19 measure or assess.

20 Things like anger management, things like management of
21 sexual urges, things like intimacy deficits ... these are
22 all dynamic risk factors that reflect flux or change. In
23 my opinion sexual recidivism is, in fact, a non-linear
24 dynamic process, and I don't believe that we're going to
25 make significant strides beyond what we now do with the

1 Static-99 until we're able to embrace in a reliable way
2 these dynamic risk factors.

3 The problem is obvious; that the vast majority of the
4 people that we end up evaluating are in prison and have been
5 in prison for years, and to evaluate those risk factors
6 reliably as if they were in the community makes no sense.

7 I have suggested the use of proxy dynamic risk factors
8 that take advantage of their comportment in prison to try
9 to assess that aspect of risk. It is, I believe, key to
10 breaking this sort of glass ceiling with respect to the
11 accuracy or efficacy with which we assess risk, which we
12 don't do very well. If we move it beyond, I think we have
13 to do that; but we can't do it, in part, because dynamic
14 risk is not blended, there's no mechanistic procedure for
15 making it a part of static risk, and because there's no way
16 at the moment of reliably coding those variables.

17 We can't do it retrospectively because we can't say
18 that Mr. Carta was in the community eight years ago and then
19 code those variables about the way he was eight years ago.
20 That's silly.

21 Q. Well, why is that silly, Dr. Prentky? Is that -- would
22 that be supported by the research as you read it to do that?

23 A. It would be supported by the very nature of what
24 dynamic risk factors reflect, which is flux/change. They
25 are intended to capture change in behavior, both

1 risk-aggravating change and risk-mitigating change, both.

2 As a rule of thumb, we impose some kind of a threshold
3 of around six months. Once we get beyond six months, the
4 information frankly is stale, and I would prefer not even
5 doing it every six months; I would prefer to get an
6 assessment of these variables within 30 days to get a more
7 accurate approximation of the dynamic risk that that
8 individual reflects at that moment in time.

9 Q. You've had occasion to read the testimony or have you
10 had occasion to read the testimony in this case from the
11 probation officer and treatment provider that Mr. Carta
12 called at the initial trial?

13 A. Honestly, I'm not sure whether I read it or not.

14 Q. Well, are you aware that Mr. Carta has a journal of
15 supervised release in the event that he's released?

16 THE COURT: Well, he just incorporated that and you
17 know you can't incorporate that in the record.

18 MR. GOLD: Fine. I will stop here, your Honor.

19 THE COURT: Thank you. We'll take a 15-minute
20 recess. I don't know if Ms. Fried's ready....

21 (Whereupon, a brief recess convened.)

22 THE CLERK: All rise.

23 THE COURT: Are we all set here?

24 MS. SERAFYN: Yes.

25 THE COURT: Okay. Are you all set, Doctor?

1 THE WITNESS: Yes.

2 THE COURT: Good, all right.

3 CROSS-EXAMINATION BY MS. SERAFYN:

4 Q. Dr. Prentky, hebephilia is defined as an attraction to
5 pubescent children, correct?

6 A. Correct.

7 Q. And pubescence typically occurs between the ages of 11
8 and 14?

9 A. Again, obviously, it varies considerably.

10 THE COURT: Pull in that mic or I'm going to lose
11 you altogether here.

12 THE WITNESS: Whoops, sorry.

13 THE COURT: All right.

14 A. It varies depending on gender. You know, obviously,
15 girls are earlier than boys, but it's generally in the
16 neighborhood of 10, 11, 12, onset.

17 Q. Well, Dr. Prentky, you're familiar with the 2009
18 Blanchard article on hebephilia, correct?

19 A. Yes.

20 Q. And in that article Blanchard uses the age range 11 to
21 14 to essentially describe or define hebephilia?

22 A. That's correct.

23 Q. And, in fact, the DSM-V proposal that we've talked
24 about today includes the age range of 11 to 14?

25 A. That's correct.

1 Q. Now, in your report on Page 8 you define hebephilia as
2 the sexual preference for postpubescent males, typically
3 young adolescents; is that just an error, Dr. Prentky, the
4 term "postpubescent"?

5 A. I suppose, counsel, it may be a little ambiguous. I
6 guess what I meant is that if there is a magic line in the
7 sand, which we talk about the onset of pubescence, that it's
8 after that point, I guess that's what I had in mind, but I
9 could see it that it could be ambiguous.

10 Q. But you agree that hebephilia is an attraction to
11 children in the midst of puberty?

12 A. Children that are already evidencing signs of physical
13 sexual development, that's correct.

14 Q. Now, you acknowledged on direct that you're aware that
15 there are psychologists in the field who actually don't
16 believe that hebephilia is a legitimate diagnosis?

17 A. Yes.

18 Q. Okay, but you disagree with that, don't you?

19 A. That's correct. I tried to present my formulation in
20 my report for how I see hebephilia. I certainly don't take
21 as striking a view as some of my colleagues.

22 Q. And in your opinion, and you've listed this, you stated
23 this opinion in your report, in your opinion hebephilia is a
24 legitimate mental disorder?

25 A. Yes, that's correct, and I've described why I feel that

1 it is a legitimate disorder.

2 Q. And when we talk about --

3 THE COURT: Excuse me, can I ask something else:
4 so now is that apart from the paraphilia or in conjunction
5 with those parameters?

6 THE WITNESS: Good question, your Honor. Hebephilia
7 is a philia; it is a paraphilia. I think that that's what
8 makes it as controversial as it is; that it's hard at times
9 to think of it always as a paraphilia as opposed to some
10 kind of psychosexual or psycho -- even psychosocial kind of
11 disorder for which the individual has sufficiently impaired
12 social and intrapersonal skills, that they're unable to
13 develop and sustain relationships with pubescent individuals.

14 THE COURT: I'm not sure I totally understand what
15 you just said, but the attraction, in your view is the
16 attraction to 11- to 14-year-old pubescent children a
17 mental disease?

18 THE WITNESS: If it's a paraphilia, and I'm not
19 trying to duck your question, then, clearly, it would
20 qualify, if it's a paraphilia, it should qualify under
21 paraphilia NOS which is a diagnosis in the DSM.

22 Q. I didn't mean to confuse things, but, Dr. Prentky, I
23 think in your report you use the term hebephilia. I guess
24 for these purposes when I talk about hebephilia, what I'm
25 talking about is the diagnosis of paraphilia NOS with the

1 descriptor hebephilia ... so do you believe, Dr. Prentky,
2 that the diagnosis of paraphilia NOS hebephilia is a
3 legitimate mental disorder?

4 A. I believe that I state fairly clearly, counsel, that I
5 believe it is potentially a defensible paraphilia ... so the
6 answer to your question is yes. I think I made that point
7 fairly clear in my report, do I not?

8 Q. I think you do too, Dr. Prentky; I'm just trying to
9 clarify because I think there was a little confusion
10 earlier. So, although -- and, actually, in fact,
11 Dr. Prentky, you have made this diagnosis of paraphilia NOS
12 hebephilia in prior cases, correct?

13 A. Yes, that's correct.

14 Q. In fact, you testified in another Adam Walsh case
15 before Judge Saris: United States versus Joel Wetmore with
16 paraphilia NOS hebephilia, correct?

17 A. Yes.

18 Q. Now, although you believe that the diagnosis of
19 paraphilia NOS hebephilia can be a legitimate mental
20 disorder, you don't think that Mr. Carta can be diagnosed
21 with that disorder, correct?

22 A. Oh, yes, indeed. I think that Mr. Carta is a vastly
23 different case than Mr. Wetmore, and I don't think the two
24 are comparable in this regard.

25 Q. And you're familiar with the diagnostic criteria for

1 paraphilia NOS, correct?

2 A. Yes.

3 Q. And did you consult the DSM-IV in connection with
4 drafting your report in this case?

5 A. You mean to consult the general paraphilia criteria?

6 Q. Yes.

7 A. I have those criteria available to me. I didn't
8 actually have to open up the DSM. I have them copied and
9 available to me.

10 Q. Okay. So you're familiar with the DSM-IV diagnostic
11 criteria for paraphilias?

12 A. Yes.

13 Q. And I'm going to show you on the camera here what has
14 been previously marked as Exhibit 11, and, Dr. Prentky,
15 you would agree that the first criteria for paraphilia is
16 recurrent intense, sexually arousing fantasies, sexual urges,
17 or behaviors, generally involving, and for our purposes
18 here, it would be generally involving children or other
19 nonconsenting persons that occur over a period of at least
20 six months?

21 A. Yes.

22 Q. And for our purposes here, the word "children" includes
23 children between the ages of 11 and 14, correct?

24 A. That's correct as long as we're talking about the
25 general criteria for paraphilia as opposed to pedophilia;

1 that's different.

2 Q. Okay, but for our purposes in trying to determine
3 whether Mr. Carta can be diagnosed with paraphilia NOS
4 hebephilia, when we look at the first criterion, we're
5 focusing on whether he has recurrent, intense sexually
6 arousing fantasies to children between the ages of 11 and
7 14?

8 A. That's correct.

9 Q. And now in your opinion, Mr. Carta doesn't meet this
10 first criterion?

11 A. I think I'll try to answer your question, but let me
12 make a somewhat broader view of this, and, that is, I posed
13 the question in my mind of what the -- Mr. Carta's sexual
14 preference is. In the broadest sense that to me would be my
15 definition, whatever his sexual preference would be, would
16 be my definition of what would result in recurrent, intense
17 sexually arousing fantasies and urges.

18 I think that that would be a reasonable definition for
19 any of us. That's where I became stuck, as it were, trying
20 to comfortably diagnose him as a hebephile.

21 Q. Well, Dr. Prentky, I'm just sort of not focusing on
22 your definition; I'm focusing on the definition that's
23 listed here in the DSM-IV for paraphilia, and my question
24 is: in your opinion does Mr. Carta meet Criterion A; in
25 other words, does Mr. Carta have recurrent, intense sexually

1 arousing fantasies, sexual urges or behaviors, involving
2 children between the ages of 11 and 14?

3 A. I guess I would have to say in response to that
4 specific question, counsel, no.

5 Q. So, Dr. Prentky, you're aware, though, that when
6 Mr. Carta was 28 years old he had oral sex with an
7 intoxicated 13-year-old boy?

8 A. I'm well aware of the long list of his encounters with
9 young teenagers, yes.

10 Q. Okay. That's good, but I'm specifically asking you
11 whether you're aware that Mr. Carta had sex, oral sex, with
12 an intoxicated 13-year-old boy when Mr. Carta was 28 years
13 old?

14 A. Yes.

15 Q. You're also aware that when Mr. Carta was 30 or 31
16 years old he engaged in sexual activity with a 13-year-old
17 boy on 30 or 40 separate occasions?

18 A. That encounter, counsel, of course, goes on for awhile.
19 Obviously, the 13-year-old would not remain 13, but it
20 certainly did begin when the youngster was 13 years old.

21 Q. And just focusing on your report here, on Page 8 at
22 the bottom here, No. 4, you say: "Mr. Carta engaged in
23 sexual activity with a 13-year-old on 30 to 40 occasions
24 when he was 30 or 31," correct?

25 A. Yes.

1 Q. Okay. And you're also aware that when Mr. Carta was
2 31 years old he had a sexual relationship with a 13-year-old
3 boy for approximately three to four years?

4 A. Right. And, counsel, obviously, again, he doesn't
5 remain the same age for a number of years; he does get older.

6 Q. Right, but it started when the boy was 13 years old,
7 correct?

8 A. That's correct, it started when he was 13.

9 Q. And now Mr. Carta took this boy from California where
10 he was sort of following the Grateful Dead and brought this
11 13-year-old boy with him to Connecticut, correct?

12 A. Yes.

13 Q. And as a result of that conduct, the boy's parents
14 actually filed a complaint with the police based on
15 Mr. Carta taking their son across country without their
16 permission; do you remember reading that?

17 A. I don't recall that in particular, no.

18 Q. Okay, and do you remember that when the boy got to
19 Connecticut with Mr. Carta he ran away?

20 A. I seem to recall that.

21 THE COURT: Just you need to make sure the mic
22 catches this. All right.

23 Q. And you don't mention this in your report, right; you
24 don't mention that Mr. Carta took a 13-year-old boy from
25 California to Connecticut?

1 A. No, I do not. It's not in the report.

2 Q. Now, when Mr. Carta was in his 30s he engaged in sexual
3 activity with a different 13-year-old boy, correct?

4 A. Well, what I indicate in my report is that there were a
5 total of three. I don't know whether you're counting more
6 than that.

7 Q. Well, when Mr. Carta was 39 years old he solicited a
8 13-year-old boy on the internet who lived two towns over
9 from him, right?

10 A. I believe this is No. 5, Item No. 5, in my report. I'm
11 not certain; I don't specify the location.

12 Q. Okay. Well, I'm going to show you a document which
13 has been marked as Exhibit 25, and this comes from the Sex
14 Offender Treatment Program Psychosexual Evaluation, and the
15 Bates No. is 944, and here it says: "Mr. Carta reports that
16 at 39 he began chatting on the internet with a 13-year-old
17 male who propositioned him," Mr. Carta, "for sex. The boy
18 lived two towns over from Mr. Carta, who picked the child up
19 and performed fellatio on the child."

20 Do you recall considering that as part of your
21 assessment?

22 A. Yes.

23 Q. Do you recall considering that as part of your
24 assessment?

25 A. Yes.

1 Q. So based on the records that we have, from the time
2 Mr. Carta was in his late 20s to at least the age of 39,
3 right before he went to federal prison, he engaged in
4 sexual activity with at least three 13-year-old boys?

5 A. Yes, that's correct.

6 Q. And this sexual activity with the 13-year-old boys
7 occurred over a period of several years, correct?

8 A. For one of those boys, yes.

9 Q. But this sexual activity with 13-year-olds occurred for
10 at least a decade, from the time Mr. Carta was in late 20s
11 until the time he was in his late 30s?

12 A. I'm sorry, what are you asking?

13 Q. What I'm asking you, Dr. Prentky, is: from the time
14 that Mr. Carta started engaging in sexual activity -- now we
15 know about the 13-year-old boys, that started when Mr. Carta
16 was in his late 20s, correct?

17 A. Yes.

18 Q. And from the time he was in his late 20s until he was
19 39 years old?

20 A. Spanned a decade of his life --

21 Q. Yes.

22 A. -- yes.

23 Q. So despite all of this, Dr. Prentky, you don't believe
24 that Mr. Carta meets the first criterion for paraphilia;
25 again, which is recurrent, intense sexually arousing

1 fantasies, urges, and behaviors involving children between
2 the ages of 11 and 14 over a period of at least six months?

3 A. I don't doubt that these encounters occurred despite
4 the fact that they're only by Mr. Carta's self-report. My
5 statement before, and, obviously, I might have acknowledged
6 in my report that he discloses these youngsters.

7 The question in my mind in diagnosing paraphilia is what
8 is his sexual preference, what is his desired or most
9 desired sexual object choice; and if you look at all of the
10 kids that he has been sexual with, it seems to me that the
11 weight of evidence clearly that his favored object choices
12 are older than that. So I don't dispute that he reports
13 that there are these 13-year-olds in his life, but there
14 are far more kids that he also reports being sexual with
15 that were years older.

16 Q. All right. Dr. Prentky, the diagnostic criteria from
17 the DSM doesn't say that you should consider the person's
18 sexual preferences, does it?

19 A. It says intense, recurrent sexual urges and fantasies.
20 Beyond that, it doesn't give us any guidelines. It doesn't
21 tell us how to make that judgment. It doesn't tell us,
22 for instance, if you take the word "recurrent," recurrent
23 certainly implies more than once, but it doesn't tell us
24 how many times more than once recurrent is. It doesn't
25 tell us how to go about thinking about intense, what does

1 intense mean ... so, I mean, these judgments ultimately are
2 subjective.

3 Q. So, Dr. Prentky, then you're interpreting sexually
4 arousing fantasies, urges, or behaviors to mean sexual
5 preference, correct?

6 A. When it comes to something like hebephilia or
7 pedophilia, I would answer yes to that question.

8 Q. And we're specifically talking hebephilia here?

9 A. That's correct.

10 Q. So since we're talking about hebephilia, you would
11 interpret sexual fantasies, urges, or behaviors to mean
12 sexual preferences?

13 A. Yes, I would interpret the entire sentence which you
14 read, which, of course, is exclusive of recurrent, intense
15 sexually arousing fantasies, sexual urges, and behaviors.

16 Q. Okay. So that whole first sentence in your mind means
17 that we should consider the person's sexual preferences?

18 A. Well, I'm not suggesting that you should or the Court
19 should. I'm suggesting that that's the way I try to
20 operationalize it.

21 My understanding, and I'm only giving you my attempt to
22 formulate this in a way that is consistent for myself, this
23 is an area of enormous ambiguity. I appreciate that there's
24 a lot of unreliability here. The only thing that I can
25 control is my own reliability, so I try to create a standard

1 for myself that I can apply so that at least I try to be
2 consistent.

3 Q. Dr. Prentky, in your view then having sex with a
4 13-year-old on 30 to 40 separate occasions is not recurrent?

5 A. Obviously, that's preposterous, but as I pointed out
6 before: if the 13-year-old was in his life for several
7 years, and I don't know what length of time, then,
8 obviously, he's no longer 13; it spans a period of at least
9 13, 14, or perhaps even 15.

10 Q. Okay, but we don't know when those 30 or 40 occasions
11 occurred, right? Those 30 or 40 occasions of sexual
12 activity could have occurred entirely when the boy was 13 or
13 14 years old; it's possible, right?

14 A. Anything is possible including the fact that he wasn't
15 even 13, okay ... I mean, we're accepting at face value that
16 Mr. Carta says he was 13 that he actually was. Mr. Carta
17 may not even have known his exact age.

18 Q. He actually could have been younger than 13?

19 A. He could have been younger; he could have been older.

20 THE COURT: This wasn't the boy who came in from
21 California, was it; the one he was involved with for four
22 years?

23 MS. SERAFYN: I don't think so, your Honor.

24 THE WITNESS: No.

25 MR. GOLD: I think we'll sort it out later; it's our

1 position that it is the same person.

2 THE COURT: So despite the complaint, nobody came
3 and got this boy?

4 MS. SERAFYN: No, I think, your Honor, the confusion
5 may be that the boy ran away after he came to Connecticut
6 and so I guess it's not clear when those 30 or 40 instances
7 occurred, whether they occurred in California, whether they
8 occurred partly in California and then in Connecticut.
9 That part is just unclear.

10 THE COURT: How long was he in California, several
11 years, right?

12 MS. SERAFYN: I think it was three years.

13 THE WITNESS: Four years.

14 THE COURT: So it could have been over that span of
15 time?

16 MS. SERAFYN: That's right, but the record isn't
17 clear.

18 BY MS. SERAFYN:

19 Q. So, Dr. Prentky, if you believe then that you wanted
20 to operationalize this criterion by determining Mr. Carta's
21 sexual preferences, let's just talk about that for a minute
22 ... so Mr. Carta admitted that his primary sexual
23 attraction is to 13- to 17-year-old males, correct?

24 A. I'm sorry, what was the age range you said?

25 Q. 13 to 17.

1 A. That's not what he indicated to me.

2 Q. Do you remember looking at that in the records?

3 A. I believe if that comes from Butner, I believe there is
4 a report to that effect, but there's some inconsistencies.

5 Q. Okay. So I'm just going to draw your attention to
6 Exhibit 25, Bates Stamp 945, and it says right here in the
7 middle: "Mr. Carta indicates that his primary attraction is
8 for 13- to 17-year-old males."

9 Do you see that?

10 A. Yes.

11 Q. Okay, and did you consider that when determining
12 whether to diagnose Mr. Carta with paraphilia NOS
13 hebephilia?

14 A. I'm not sure where you're reading from.

15 Q. It's right here.

16 A. No, no, no. I mean what documents?

17 Q. This comes, again, from the, from the psychosexual
18 evaluation.

19 A. Yes, that's what I thought you were referring to, the
20 eval that was done at Butner.

21 Q. Now, and he admitted his attraction to 13- to
22 17-year-olds in 2005, correct?

23 A. What is the date that this report says, is that what
24 you're asking me?

25 Q. Mr. Carta said he likes boys who are in the midst of

1 puberty, right, or again, so the same document here, at the
2 highlighted portion at the bottom it says: "He says that he
3 likes youths who are in the midst of puberty and developing
4 secondary sexual characteristics that he can achieve orgasm
5 with."

6 Do you see that?

7 A. Yes.

8 Q. And you read this document in determining whether you
9 could diagnose Mr. Carta with hebephilia?

10 A. Yes, I read this document, counsel.

11 Q. But did you consider this information when attempting
12 to diagnose Mr. Carta?

13 A. Counsel, I weighed it.

14 Q. It's a yes or no question, Dr. Prentky.

15 MR. GOLD: May the witness finish the answer, your
16 Honor?

17 A. In all of the evidence that was available to me,
18 there's an overwhelming number of reports from Mr. Carta,
19 and they're not always consistent. As I said to you, what
20 he shared with me was entirely consistent with what he was
21 learning when he was down in Butner.

22 Q. Now, you read Mr. Carta's Sex Offender Treatment
23 Program homework, right?

24 A. Yes.

25 Q. Now as part of that sex offender treatment homework,

1 Mr. Carta stated, and this comes from Exhibit 27, Bates
2 Stamp 1030, Mr. Carta answered the question: "What is your
3 preferred age range?" For males he said the youngest that
4 he prefers is age 13, and the oldest is age 28, do you see
5 that?

6 A. Yes.

7 Q. Okay, and you read this, Doctor, and considered it as
8 part of your diagnosis, correct?

9 A. That's correct.

10 Q. Now, in addition to Mr. Carta disclosing this
11 information while at Butner about his preferred age range,
12 we can also glean information about his preferred sexual age
13 range from his child pornography collection, correct?

14 A. That's extraordinarily difficult on two accounts:
15 one, determining the current age of the child accurately,
16 and, two, determining Mr. Carta's interest in that child.

17 Q. Well, Dr. Prentky, in your report on Page 8, the last
18 paragraph, you say: "Evidence of interest in younger
19 children must come from the child pornography that was
20 confiscated or from Mr. Carta's disclosure while in SOTP."

21 Do you see that?

22 A. Yes, of course.

23 Q. Okay. So based on this report, we can glean
24 information from Mr. Carta's preferred sexual age range
25 from his child pornography collection?

1 A. What was the question?

2 Q. That was a question, yes.

3 A. I didn't hear the end of it.

4 Q. The question was, Dr. Prentky: we can glean from
5 Mr. Carta's child pornography collection his preferred
6 sexual -- his preferred interest in the age range, and that
7 age range seemed to be 11 to 14 years old; is that right?

8 THE COURT: That's a two-part question.

9 MS. SERAFYN: Okay. Let me back up.

10 THE COURT: Well, does it matter which pictures
11 he's collecting, what the age range is; would that be
12 clinically significant to you?

13 THE WITNESS: Your Honor, there are two major
14 issues: one, understanding the age of the individuals that
15 we're looking at on the screen and determining whether --

16 THE COURT: Hopefully, we're not.

17 THE WITNESS: All right. It is obvious that it is
18 problematic, and, the second issue, of course, is, as I
19 mentioned earlier this morning, Mr. Carta assembled a large
20 range of pornographic images that I believe well exceeded
21 the range of his sexual interest and nonsexual preferences
22 for purposes of trading ... so in looking at particular
23 images, it's not clear whether he gathered those images
24 because he, himself, preferred them and wanted them for
25 purposes of his own sexual gratification or for purposes

1 of trading; and as I said, it's also difficult to know
2 looking at these kids how old they are.

3 Q. And you believe that by determining what the age
4 ranges were in his child pornography collection we can
5 gather some information about his preferred sexual interest?

6 A. If you're asking about that sentence, counsel, I think
7 all I was trying to say is that I would be derelict if I
8 ignored as potential evidence the child pornography that
9 was confiscated from his computer.

10 Q. Well, when you met with Mr. Carta, he told you that he
11 selectively looked at pictures of boys in the age range of
12 14 to 18 for purposes of sexual gratification, right?

13 A. Correct.

14 Q. And you met with Mr. Carta after the first trial in
15 this case, right?

16 A. Yes, that's correct.

17 Q. And you didn't testify and contrast, correct?

18 A. That's correct.

19 Q. But you have the transcripts, right?

20 A. Yes.

21 Q. And in that trial there was a discussion of hebephilia,
22 and there was an age range that was discussed during the
23 trial, correct?

24 A. Yes.

25 Q. And it was after that trial that Mr. Carta told you

1 that he prefers boys aged 14 to 18, right?

2 A. Yes, that's correct.

3 Q. Now, he also told you that the majority of the pictures
4 that he had in his child pornography collection, that he
5 actually never even looked at, right?

6 A. That's correct.

7 Q. And he said that collecting child pornography was like
8 collecting baseball cards?

9 A. That's correct.

10 Q. All right, and you credit his statement that he, that
11 he collected child pornography solely for trading purposes?

12 A. Not solely.

13 Q. Not solely, but partly he collected child pornography
14 just because he wanted to collect; he was almost obsessed
15 with collecting?

16 A. That's, again, in my experience, counsel, typical; guys
17 will amass large collections in part to use for trading
18 purposes.

19 Q. And, again, in Mr. Carta's SOTP homework which you
20 read, he describes the child pornography collection; this
21 is Exhibit 27, Bates Stamp 1034, and it says right here:
22 "Of your child pornography collection: did any image depict
23 the following," and it says "(Check all that apply)," and
24 Mr. Carta checked off "any child ages 3 to 6, any child 7 to
25 11," and "any child 12 to 17," right?

1 A. Correct.

2 Q. Okay, and then the next question is: "What was your
3 age of preference in the child pornography," and it says,
4 "(Rate 1 for most preferred, rate 2 for next preferred,
5 etc.)" So from the first category of children, 0 to 2,
6 there's no checkmark, right?

7 A. Correct.

8 Q. And that would indicate that Mr. Carta has no interest
9 in children ages 0 to 2, right?

10 A. Yes.

11 Q. And then the next line has "children 3 to 6," and,
12 again, there's no checkmark, right?

13 A. Correct.

14 Q. Now, the next line says "children 7 to 11," and
15 Mr. Carta wrote in the number "2" there, right?

16 A. That's correct.

17 Q. And that indicates that children ages 7 to 11 are his
18 second preference, correct?

19 A. Yes, correct.

20 Q. And then below that it says "children 12 to 17,"
21 Mr. Carta rated that a "1," correct?

22 A. Correct.

23 Q. So according to Mr. Carta's SOTP homework, his
24 preference is children 12 to 17 first and 7 to 11 second,
25 right?

1 A. That's correct.

2 Q. With no preference to children under the age of 6,
3 right?

4 A. That's correct.

5 Q. Okay. But he told you that he only looked at pictures
6 of boys ages 13 to 18, correct?

7 A. That's correct.

8 Q. Now, Mr. Carta had a couple thousand images of child
9 pornography on his computer, right?

10 A. Yes.

11 Q. And he actually posted more than 100 images of child
12 pornography to a news group, right?

13 A. Yes.

14 Q. And these 100 pictures that he actually posted were
15 pictures that he actually sort of uploaded and posted to the
16 internet, right?

17 A. Yes.

18 Q. And those pictures contained images of prepubescent
19 boys, correct?

20 A. Yes.

21 Q. Now, Dr. Prentky, you don't believe that Mr. Carta's
22 primary sexual interest are boys in the age range of 12,
23 13, and 14, because he didn't tell you that, right?

24 A. I'm not sure how to respond to that, counsel. When
25 you said he didn't tell me, I mean, this is simply one

1 question that I asked; we talked about this, obviously,
2 for some time.

3 Q. Well, I guess, Dr. Prentky, what I'm asking is: you
4 don't credit the documents that I've just shown you
5 indicating Mr. Carta's preference, sexual preference, in
6 boys ages 12, 13, and 14 because he didn't tell you that;
7 what he told you was that he prefers boys in the age range
8 of 14 to 18?

9 THE COURT: In other words, were you relying
10 primarily on his self-report?

11 THE WITNESS: I was relying on good measure on his
12 self-report because that is all that we have; everything
13 that we're looking at is his self-report including Butner.
14 I mean, it was all his self-report including the documents
15 that you're showing me; that's his self-report as well.

16 THE COURT: So, excuse me, now that you see these
17 documents, do you doubt what he told you?

18 THE WITNESS: No, your Honor. I think it's far, far
19 more complex. I don't want to reduce this to something as
20 simplistic as a fixed and absolute age range.

21 I mean, in trying to understand what his real
22 preferences are is highly complex. To the best of my
23 knowledge, I have not seen a PPG assessment that has been
24 done, a penile plethysmograph; that certainly would have
25 helped, or even an Abel Assessment.

1 Q. Well, Dr. Prentky, let me stop you right there and ask
2 you about the Abel Assessment. Now (coughing), excuse me.

3 THE COURT: While you're coughing, what is your
4 expectation of the expected amount of time you need with
5 him?

6 MS. SERAFYN: I would expect that I would need
7 another hour. I'm not sure that I could finish right at 5.

8 THE COURT: I'm not sure that your voice is going to
9 last that long.

10 MS. SERAFYN: I think it will be close.

11 THE COURT: Well, here's the issue, let me just go
12 off the record for just a minute.

13 THE CLERK: All rise.

14 (Whereupon, a brief recess convened at 4:05 p.m.)

15 THE CLERK: All rise. Everyone can be seated.

16 THE COURT: You're all resuscitated, energized.

17 BY MS. SERAFYN:

18 Q. Dr. Prentky, before the break we were talking about the
19 Abel Assessment of Sexual Interest; are you familiar with
20 this instrument?

21 A. Yes.

22 Q. And, in fact, you've administered this instrument
23 hundreds of times in the past, correct?

24 A. Probably not hundreds of times, but I have certainly
25 used it.

1 Q. You've administered it more than 50 times?

2 A. Maybe 50 times. I'm sorry, I didn't count.

3 Q. And you've been trained on it, administering the Abel
4 Assessment, correct?

5 A. Yes.

6 Q. And this instrument relies on visual reaction time in
7 response to pictures of children or adolescents or even
8 adults to assess someone's sexual interest, correct, and
9 you've actually used these tests in other Adam Walsh cases to
10 assess sexual interest, correct?

11 A. I don't remember.

12 Q. And in United States versus John Volungus, an Adam
13 Walsh case before Judge O'Toole, you administered the Abel
14 Assessment?

15 A. Correct.

16 Q. And based upon your administering of the Abel
17 Assessment in that case, you were able to determine what
18 the inmate's sexual preferences were, correct?

19 A. I was able to provide feedback about what the results
20 of the Abel Assessment were, that's correct.

21 Q. But you didn't use the Abel Assessment in this case,
22 right?

23 A. That's correct.

24 Q. And instead of administering the Abel Assessment on
25 Mr. Carta to determine his sexual interest, you instead

1 relied on his statement to you that he was most interested
2 in boys between the ages of 14 and 18, right?

3 A. I wouldn't exactly couch it that way.

4 THE COURT: Would you pull in the mic a little bit.

5 THE WITNESS: Oh, sorry. I said I wouldn't exactly
6 couch it that way. I wouldn't say one as opposed to the
7 other.

8 I made a determination at the time that Mr. Carta's
9 history wasn't so overwhelmingly of an antisocial nature
10 that I was less concerned about using the Abel with him
11 than I was in the Volungas case.

12 Q. So other than Mr. Carta's own statement to you, you
13 didn't do anything else to consider or to determine what
14 his actual sexual preference was in terms of age?

15 A. Beyond trying to assimilate and make sense of the
16 overwhelming amount of information that can be gleaned from
17 the records.

18 Q. So I want to now focus on the second criterion for a
19 diagnosis of paraphilia from the DSM-IV. I'm showing you
20 Exhibit 11, and it's the second highlighted paragraph here
21 or highlighted sentence that says: "For the remaining
22 paraphilias, the diagnosis is made if the behavior, sexual
23 urges, or fantasizing cause clinically significant distress
24 or impairment in social, occupational, or other important
25 areas of functioning."

1 Do you see that?

2 A. Yes.

3 Q. Okay. And, again, having to operationalize this, is
4 it fair to say that impairment in social, occupational, or
5 other areas of functioning would include things like, things
6 like not being able to keep a job?

7 A. Yes. I'm sorry, I was actually reading the rest of the
8 paragraph. It's actually somewhat ambiguous. If you read
9 in the middle of the paragraph where it reads: "For
10 Pedophilia, Voyeurism, Exhibitionism, and Frotteurism, the
11 diagnosis is --

12 THE COURT REPORTER: Excuse me. Could you try to
13 keep your voice up; I can't hear you.

14 THE WITNESS: The mic is almost in my mouth. In
15 the middle of the paragraph where it reads: "For Pedophilia,
16 Voyeurism, Exhibitionism, and Frotteurism, the diagnosis is
17 made if the person has acted on these urges," et cetera,
18 et cetera. And it says, "For Sexual Sadism, the diagnosis
19 is made if the person has acted on these urges with a
20 nonconsenting individual," and so forth. And then the
21 sentence that you highlighted, it says: "For the remaining
22 paraphilias," it seems to me that the occasion there is that
23 that is the exclusion of the affirmation paraphilias; that's
24 the way I would read it.

25 Q. But hebephilia wasn't previously mentioned in this

1 paragraph, correct?

2 A. Hebephilia, again, gets into sort of a diagnostic
3 conundrum, if you will, that I am using it as a paraphilia
4 NOS category because it's the only way at the present time
5 to diagnose it.

6 However, you have entered into evidence the criteria for
7 a DSM-V diagnosis called pedohebephilia, so I'm not sure if
8 the intent would be to be inclusive of that diagnosis called
9 pedophilia.

10 Q. Dr. Prentky, I'm not asking you right now about the
11 proposal in the DSM-V. What I'm focused on now is the
12 DSM-IV, the actual published book that we have, and this
13 comes from Page 566 in the DSM-IV, and it says: "For the
14 remaining paraphilias," so would you agree that paraphilia
15 NOS hebephilia is kind of lumped into this category of the
16 remaining paraphilias?

17 A. I would imagine that that would be the case.

18 Q. And hebephilia, obviously, isn't pedophilia, voyeurism,
19 exhibitionism, or sexual sadism, right? Those are the other
20 paraphilias that are mentioned here.

21 A. The only reason for clustering this, counsel, is that
22 it says hebephilia has long been discussed as part of
23 this larger discussion about pedophilia. What it is is a
24 continuous diagnosis that has to be seen as a similar kind
25 of paraphilia, differentiated only by virtue of preferred

1 choice that is made or whether it's something distinct.

2 That's the only reason that I'm mentioning it.

3 THE COURT: Why don't we see if we can finish it
4 by 5.

5 MS. SERAFYN: I'm trying to do my best, your Honor.

6 Q. I just want to turn your attention back to your
7 report, Page 8, you say here in the report, this highlighted
8 section: "It is my professional opinion that at the present
9 time hebephilia when correctly diagnosed is legitimate based
10 on one substantive consideration," and then you say:
11 "Criterion B of DSM-IV-TR specifies that the behavior, sexual
12 urges, or fantasies cause clinically significant distress or
13 impairment in social, occupational, or other important areas
14 of functioning."

15 Do you see that?

16 A. Yes, that's correct.

17 Q. Okay. So you would agree that this is the second
18 criterion that you considered in determining whether
19 Mr. Carta had this diagnosis of paraphilia NOS hebephilia?

20 A. That was my formulation, correct.

21 Q. Okay. And as part of your formulation, did you
22 consider that not amenable to keeping a job constituted
23 impairment in social, occupational, or other important
24 areas of functioning?

25 A. Yes, absolutely.

1 Q. And not showing up to a job would similarly be an
2 impairment of function, right?

3 A. Correct.

4 Q. And not showering would be another impairment of
5 functioning?

6 A. That's correct.

7 Q. Being arrested would be another example --

8 A. Correct.

9 Q. -- correct? So now during these years when Carta was
10 molesting the three 13-year-old boys that we talked about
11 earlier, during that ten-year span, Mr. Carta never had any
12 meaningful employment during that time, right?

13 A. His employment record was as I described it earlier.

14 Q. Well, during that time that he was molesting the three
15 13-year-old boys he never held down a steady job, correct?

16 A. No, that's correct.

17 Q. And, in fact, there was no long-term employment history
18 at all in his entire life?

19 A. That's correct.

20 Q. And his entire employment history actually consists of
21 odd jobs?

22 A. As I described this earlier, that's right.

23 Q. And during the time that Mr. Carta was molesting these
24 three 13-year-old boys, he was pretty obsessively looking at
25 child pornography on his computer, right?

1 A. That I don't know.

2 Q. And while he was looking at child pornography,
3 Mr. Carta was masturbating to the images of child
4 pornography, correct?

5 A. Occasionally. I don't know -- I don't recall the
6 frequency of his masturbation. I don't know that we
7 actually discussed it.

8 Q. Well, if we look at Exhibit 27, Bates Stamp 1032,
9 Mr. Carta, as part of his SOTP homework, had to describe
10 the frequency and right here it says: "Estimate the number
11 of masturbation episodes you engaged in while viewing or
12 fantasizing about child pornography/erotica during your
13 peak," and the range per week was from 9 to 20 hours.

14 Do you see that?

15 THE COURT: It's actually episodes.

16 A. It's not hours.

17 Q. Well, episodes 9 to 20 per week, correct?

18 A. Yes, that would be correct.

19 MR. GOLD: What page number?

20 MS. SERAFYN: It's Page 1032, sorry; I thought I
21 said that.

22 Q. And Mr. Carta sometimes missed work because he was
23 looking at child pornography, correct?

24 A. If it's so indicated.

25 Q. Well, do you remember reading that as part of the

1 records?

2 A. I don't recall that particular point, counsel, in these
3 records now.

4 Q. Now, do you recall reading that sometimes Mr. Carta
5 didn't shower because he was looking at child pornography?

6 A. I recall that in general his personal hygiene was
7 impacted.

8 Q. And despite the fact that Mr. Carta reported not
9 showering at times, missing work because he was masturbating
10 to child pornography, you found that he didn't meet this
11 second criterion; is that right?

12 A. No, that's not right.

13 Q. So did you find that he meets the second criterion?

14 A. Yes, absolutely. I think that it would be certainly
15 appropriate to conclude that his impairment was undermined
16 during that long stretch of time. I don't think there's any
17 question about that.

18 THE COURT: So now I'm trying to understand, so is
19 it --

20 THE WITNESS: It's not a Criterion B issue.

21 THE COURT: So is it, could he have had the
22 hebephilia during that decade, the paraphilia NOS; and when
23 you spoke to him, he no longer had it?

24 THE WITNESS: Your Honor, so much of this comes from
25 the time that he's in treatment at Butner and so much of it

1 comes from his self-report that I honestly don't know what
2 to make of all of it.

3 When I met with Mr. Carta, my task was to try, to the
4 best of my ability, to diagnose him today, today, today, but
5 whenever I was meeting with him, not during the time that he
6 was at Butner; and self-reporting I find to be highly
7 problematic.

8 We're dealing with an overwhelming amount of evidence
9 that falls in the category of self-report, including what
10 he said to me, what he said to all of the other examiners
11 that had met with him, what he said to his therapists at
12 Butner, and it's very difficult to put all of that into
13 some coherent perspective and to make sense of it.

14 THE COURT: I know, I got it. So what I'm trying
15 to understand here is that assuming for the minute that the
16 self-reports were relatively accurate back at Butner, and
17 that much of it was corroborated in front of you, that he
18 had this relationship with three 13-year-olds for a decade
19 and it interfered with his significant life functions, and
20 so he would qualify as having this paraphilia NOS hebephilia
21 for at least that decade, have you -- I mean, you see this
22 all the time, you see these cases; by the time he talks to
23 you, he's not saying that.

24 So one of two things is possible: he no longer has it
25 or he's changing his story because he's sat through a trial?

1 THE WITNESS: I understand what you're asking me.
2 It's not my -- I guess it wasn't my impression when I met
3 with him that he was merely changing his story. I honestly
4 believed that this individual sitting here today has
5 metamorphosed, has changed, over the years that he's been
6 in prison.

7 I think to think otherwise would be to conceive of him
8 as being an unmovable static organism. I think that he's
9 been enormously impacted by the years and years and years
10 that he's been down, that he's been in prison, that he's
11 been left to his own devices to mull over his life, that he
12 has done soul-searching in the context of treatment, that
13 he's tried his best to come to terms with his life during
14 the half-a-year or so that he was at SOTP at Butner, and I
15 think it has changed him as a person; and what he reflects
16 to me today is not about -- it's a reflection of everything.
17 It's a reflection of his whole life in the past. You know,
18 the discovery is also a reflection of his past that goes
19 back to the very beginning; and to try to understand who he
20 is today, I think we have to move beyond, way beyond, the
21 past and to try to, to the extent we can do it, to zero in
22 on who this individual is today sitting here in the
23 courtroom.

24 THE COURT: But that seems to be my choice. I mean,
25 it seems like he clearly qualifies back in that decade for

1 this definition?

2 THE WITNESS: Correct.

3 THE COURT: So the issue is today, it's your
4 assessment as a doctor that he's changed; the flip side is
5 the government's point of view probably is that he's
6 tailored his testimony to understanding what happened at
7 the trial, and that's going to be what's up to me to
8 decide, right?

9 THE WITNESS: Yes, and I think that there's a larger
10 picture here, and I think that we don't -- I don't want to
11 get bogged down in trying to draw this white line across the
12 carpet, and say: 13, 14, 13, 14, and if he steps to one
13 side he's okay; if he steps to the other side, he's
14 diagnosable.

15 I don't think that that is going to help the Court, and
16 it certainly didn't help me. I'm trying to balance it, to
17 come up with an appreciation of the likely sexual preference
18 of this individual today, and that's what I came down with --

19 THE COURT: Sure.

20 THE WITNESS: -- on the side of --

21 THE COURT: That he's changed, he's moved on to
22 older teenagers?

23 THE WITNESS: Basically, yes.

24 THE COURT: All right. So I don't know that we
25 need to hammer it so much on the pass, but I don't know,

1 Mr. Gold may not agree, but, I mean, it seems that if he
2 had in the past, so the issue is today, and your argument
3 basically is that he has an IQ of 132, and he listened to
4 that trial, and he changed what he said to this doctor, and
5 that's what the issue is, right?

6 MR. GOLD: Can I lodge an objection?

7 THE COURT: What?

8 MR. GOLD: Or, well, you know, make a comment. I
9 mean, I don't know that -- it's in the middle of cross I
10 understand -- but the testimony was that the majority of
11 the victims even during this period were older. There was
12 only three in the age range. I think that's the testimony,
13 and that's part of the basis for not giving the diagnosis
14 historically, and, I mean, that was --

15 THE COURT: Okay, that's a fair point, and I'll let
16 you argue it later, but I'm just trying to move this ahead
17 to where the real debate point is, is has he changed.

18 Q. You know, I see this as part of the debate. My
19 question is to Dr. Prentky, but, Dr. Prentky, Mr. Carta was,
20 for ten years, up until the time he was 31 years old, he
21 had instances of molesting three 13-year-old boys, right?

22 A. Correct.

23 Q. And by the time he's 42 he's in prison, right?

24 A. That's correct.

25 Q. And he's been in prison since then?

1 A. That's correct.

2 Q. So I just wanted to show you, Dr. Prentky, just to
3 finish this point up. This is the document that I was
4 looking for earlier, but it says right here, "Most
5 recently," and this again comes from Exhibit 25, Bates
6 Stamp 945. It says: "Most recently prior to his
7 incarceration Mr. Carta indicates that he was hooked on
8 masturbating to child pornography two to three times a day
9 and spending 12 to 14 hours on the computer and missed work
10 because of the time he spent on the computer and at times
11 would not even show to work."

12 Do you see that?

13 A. Yes.

14 Q. So, Dr. Prentky, I'm just trying to streamline things
15 so hopefully you can give a yes or no answer, but is it
16 fair to say that Mr. Carta does not meet in your opinion
17 Criterion A for a hebephilia diagnosis, but he does meet
18 Criterion B?

19 A. That's fair.

20 Q. Thank you.

21 THE COURT: And that's as of today?

22 A. Correct. Well --

23 THE COURT: Or is it at all times as Mr. Gold says?

24 THE WITNESS: No. I mean, as of today it's very
25 difficult, because as counsel pointed out, I mean, he's

1 been in prison now for years so it's rather difficult to get
2 any clear sense of his adult, you know, his adaptations
3 today, how functional or dysfunctional he would be today.
4 That actually goes to the difficulty of assessing dynamic
5 risk factors so it's hard to evaluate.

6 THE COURT: Well, as of the period of time in which
7 he had these relationships with these 13-year-olds, do you
8 have an opinion as to what his diagnosis would have been?

9 THE WITNESS: During that time period I would have
10 been much more comfortable assigning a diagnosis of
11 hebephilia, yes.

12 Q. Now, Dr. Prentky, I believe on direct you testified
13 that Mr. Carta did not display any cognitive dysfunctions;
14 is that right?

15 A. During the time that I was with him.

16 Q. Right. So I just want to focus your attention on
17 Exhibit 22, Bates Stamp 166, and it says here in the second
18 paragraph, that's highlighted: "The inmate has little
19 understanding of the thoughts, feelings, and behaviors
20 involved in his sexually deviant acting out. He harbors a
21 number of cognitive distortions related to his victimization
22 of young boys (e.g., boys need a mentor/parent in exchange
23 for sex, boys are able to make an informed choice with
24 regard to sex, etc.)"

25 Did you review this document as part of your assessment

1 here?

2 A. Yes.

3 Q. Okay. So at least according to this PDS note,
4 Mr. Carta was exhibiting cognitive distortions, correct?

5 A. This is, again, during the time when he was at Butner,
6 correct?

7 Q. Yes.

8 A. Yes, in 2006.

9 Q. Now, showing you the second page of this exhibit, the
10 highlighted portion, again, says: "The inmate continues to
11 be defensive about the harm he has caused children. He does
12 not view his behaviors as contributing to the exploitation
13 of children. He continues to use cognitive distortions to
14 minimize his responsibility and the perception of harm to
15 his victims. He does not appear to understand the gravity
16 of the sexually deviant behaviors."

17 Do you see that?

18 A. Yes.

19 Q. Now, again, this is from 2006; nothing has changed for
20 Mr. Carta since 2006, right?

21 A. I'm sorry, how do you mean nothing has changed? Do
22 you mean he's in prison; is that what you're asking?

23 Q. Well, if he continues to be in prison; he hasn't had
24 any meaningful sex offender treatment since 2006, has he?

25 A. Other than that which he's been exposed to at FMC

1 Devens.

2 Q. And, I'm sorry --

3 THE COURT: Has he had some at Devens?

4 THE WITNESS: I said other than whatever he's been
5 exposed to during the time that he's been at FMC Devens.

6 Q. I don't understand, Dr. Prentky. Are you saying that
7 Mr. Carta has had sex offender treatment at Devens?

8 A. I said whatever he's been exposed to.

9 Q. I don't understand what that means. Has he had
10 treatment, sex offender treatment, at Devens or not?

11 A. I'm saying I don't know --

12 THE COURT: He doesn't know.

13 A. -- what he's been exposed to.

14 Q. So as far as you're aware, the only sex offender
15 treatment that Mr. Carta has had is the treatment that you
16 discussed on direct at Butner that he voluntarily withdrew
17 from, correct?

18 A. That's the only structured program, the only sex
19 offender treatment program that he's been in.

20 Q. And he was in that program in 2005, correct?

21 A. That's correct.

22 Q. And he only lasted about seven months, right?

23 A. That's correct.

24 Q. So his treatment started and ended before the 2006
25 note in Exhibit 22 I just showed you that talked about his

1 cognitive distortions, right?

2 A. I'm not sure. I don't recall the exact date that he
3 left treatment. It seems to me that it was in the same
4 year, that is, in the year 2006; I don't remember what
5 month it was.

6 Q. I'm sorry, 2006 was when he started treatment or ended
7 treatment?

8 A. No, ended, I believe that it was during 2006 when he --

9 Q. So you testified that Mr. Carta voluntary dropped out
10 of sex offender treatment, correct?

11 A. Yes.

12 Q. Because he no longer wanted to participate in it,
13 right?

14 A. Correct.

15 Q. And so I'm showing you Exhibit 19 here, and it says:
16 "On March 1st, 2006, inmate Carta submitted a copout to
17 withdrawal from the sex offender treatment program. He
18 stated that he no longer wants to be in sex offender-
19 specific treatment and can no longer tolerate the demands
20 of treatment."

21 Do you see that?

22 A. That's correct.

23 Q. Okay. And you considered that as part of your
24 assessment, right?

25 A. Yes.

1 Q. And Carta, Mr. Carta, admitted to one of his treatment
2 providers that he was attracted to some of the
3 younger-looking inmates in his treatment group?

4 A. Correct.

5 Q. And we know that from this document here, Exhibit 21,
6 which says that, "Mr. Carta does not think he has what it
7 takes to complete treatment. He admitted that he has
8 purposefully placed himself in positions to be close to the
9 young members who he is sexually attracted to."

10 Do you see that?

11 A. Yes.

12 Q. Now, when we were talking a bit earlier about the
13 specific reasons why Mr. Carta withdrew from treatment, and
14 I wanted to direct your attention to Exhibit 27, Bates
15 Stamp 955; do you recall ever reviewing this document?
16 Let's see if I can find it ... it comes from this Sex
17 Offender Treatment Program Discharge Report dated March 5th,
18 2006.

19 Do you see that?

20 A. Yes.

21 Q. So do you recall reviewing Bates Stamp 955?

22 A. Yes.

23 Q. And in this document here, I don't want to read the
24 entire highlighted section, but it says that: "Prior to
25 his actual termination, Mr. Carta spoke of quitting

1 treatment on numerous occasions, and he impulsively
2 submitted at least two written requests that he quickly
3 regretted and withdrew."

4 Do you remember that?

5 A. Yes.

6 Q. Okay. And then this report goes on to say that, "Other
7 program participants began reporting that, not only was
8 Mr. Carta focusing the majority of his attention on young
9 members, that he was covertly fueling their dissatisfaction
10 with treatment by reinforcing their antisocial attitudes and
11 deviant sexual behaviors."

12 Did you consider that as part of your risk assessment;
13 in other words, the reason for Mr. Carta withdrawing from
14 treatment?

15 A. Counsel, those are two different questions.

16 Q. Dr. Prentky, did you consider the fact that Mr. Carta
17 withdrew from treatment because he was focused on his sexual
18 attraction to younger members of the group as part of his
19 sexual treatment?

20 A. Yes.

21 Q. And did you also consider, just showing you the bottom
22 of this page, this statement here where it says -- let's see
23 -- I'm sorry, I'm actually going to show you the next page,
24 Page 956, just to kind of streamline things.

25 It says right here at the bottom of this page: "His

1 behavior in treatment mimicked his offense cycle in the
2 community in which he sought out contact with the younger
3 program participants who he groomed in sexually provocative
4 ways all under the guise of helping them?"

5 Did you consider that as part of the risk assessment?

6 A. I read it, counsel. Did I consider it as part of my
7 risk assessment, no.

8 THE COURT: Well, let me ask you this on the part of
9 whether or not he's in serious danger in not reoffending,
10 serious difficulty in not reoffending, does this give you
11 concern?

12 THE WITNESS: No.

13 THE COURT: Why?

14 THE WITNESS: This issue, in particular, came up
15 earlier. The whole notion that he was in cycle, because
16 he's attracted to other men at Butner, seems not to
17 personally be germane when it comes to estimating the risk
18 that he may pose out in the community today for reoffending
19 against an underaged youngster; that we may consider that
20 any involvement, henceforth, that Mr. Carta has with 19 and
21 20-year-olds to be maladaptive given his age, but they're
22 not illegal.

23 I don't expect for the rest of his life that there's a
24 high likelihood that he's going to establish his strongest
25 bonds and his longest relationships with people his own

1 age. I would guess that whatever his preferences are today
2 they're going to be, as we see them, for young men in the
3 vicinity of 20 years old.

4 I think that he clearly, clearly understands at this
5 point that young teenage boys are off-limits. There's no
6 question in my mind that he has been -- that that message
7 has been permanently burned, burned inexorably, into his
8 unconscious mind, and either he'll go in haste or he'll find
9 himself a legal young man, and those legal young men may be
10 in their early 20s, but I don't consider that evidence that
11 he was in cycle, that he was sexually attracted to other
12 inmates there.

13 As I said before, if he wouldn't be arrested, then I
14 don't assume that we're talking about 13-year-olds being in
15 the treatment program at Butner, then I believe what we
16 see is what we've got; that that is what he's going to
17 experience when he returns to the community: primary
18 sexual attraction to young men around the age of 20.

19 Q. But, Dr. Prentky, as you just said, there obviously
20 are no children in the sex offender treatment program,
21 correct?

22 A. That's correct.

23 Q. So this reference to Mr. Carta continuing in his
24 offense cycle in prison focuses on the fact that Mr. Carta
25 was attracted to the youngest-looking members in his

1 treatment group, right?

2 A. That's correct.

3 Q. And you think, though, that Mr. Carta has changed
4 since the time that he was 39 years old and sexually
5 molesting a 13-year-old boy, right?

6 A. That's correct.

7 Q. And you think he's changed just by virtue of the fact
8 that he's been in prison, correct?

9 A. I would never want to underestimate the import of eight
10 years in prison for modifying behavior. I think that's
11 what prison's all about. It's a clearly significant
12 sanction to deprive someone of their liberty for eight
13 years.

14 Somebody certainly as intelligent as Mr. Carta
15 understands that, and that's one thing that he did say to
16 me that I think is accurate. He said that if I ever did
17 anything like that again I would deserve to spend the rest
18 of my life in prison because I would be a stupid idiot.

19 Q. And so Mr. Carta hasn't changed because of anything
20 that he learned in treatment because he only lasted seven
21 months in treatment, right?

22 A. I would certainly not say, counsel, that he hasn't
23 learned anything, he hasn't benefited in any way by the
24 seven months he was in treatment. I don't think that's a
25 fair representation.

1 Q. So you saw evidence in the record of Mr. Carta
2 benefiting from the seven months of treatment that he had
3 before he withdrew?

4 A. What I saw, counsel, is an enormous amount of struggle,
5 and I believe that that's part and parcel of the engagement
6 in treatment. It's not unusual for people to have to
7 overcome that resistance in his case to what he had been
8 doing for the better part of his entire life.

9 He comes in, you know, at the age of 40, right, and he's
10 being asked to rethink his entire life. He's been asked to
11 repath everything that he's ever done in a criminal life.
12 He's being reasked to define all of his prior sexual
13 contacts as not only criminal in nature but harmful in
14 nature, and that's a lot to swallow, and the fact that he
15 responded rebelliously is probably not unexpected.

16 I would have preferred that he move through the
17 rebelliousness and continue his involvement, but it doesn't
18 mean that the time was meaningless.

19 Q. So, Dr. Prentky, Mr. Carta identified several goals
20 that he had before he entered the sex offender treatment
21 program. Do you remember that?

22 A. Yes.

23 Q. So one of his goals, this comes from Exhibit 24, was
24 to -- Item No. 3 here, one of his goals was being able to
25 work a regular job. Do you remember that?

1 A. Yes.

2 Q. Now, Mr. Carta admitted that he actually quit most of
3 the jobs that he had because he doesn't like being told what
4 to do, right?

5 A. Yes.

6 Q. And that's also one of the reasons why he withdraw
7 from the treatment program, because he didn't like the
8 sort of rules that had been established for the treatment
9 program, right?

10 A. Perhaps you could capture it that way. I'm not sure if
11 it was the rules, the regimentation, the structure of the
12 treatment program as much as the expectation that he was to
13 probe and essentially evacuate all thoughts and fantasies
14 and disclose in a way that at that time he simply couldn't
15 do.

16 Q. So, Dr. Prentky, you didn't see any evidence in the
17 record that in the seven months that Mr. Carta was in
18 treatment before he withdraw, you didn't see any evidence
19 that he learned any skills that would enable him to begin to
20 work a regular job, did you?

21 A. I'm not sure honestly, counsel, what skills would be
22 evident in the course of SOTP that would speak to his
23 ability to sustain employment.

24 Q. Well, Dr. Prentky, I'm not talking about the skills as
25 in trades; I'm talking about characteristics or qualities,

1 and, obviously, Mr. Carta identified that he's not able to
2 follow rules or the reason why he quit the jobs, what I'm
3 asking you is, is there any evidence that you saw that he
4 learned anything through treatment that would enable him to
5 hold down a job?

6 A. Just, counsel, I'm very much of the mindset that the
7 most important time for Mr. Carta, as for all these men who
8 are released, will be their aftercare plans and will be the
9 time they spend in treatment, not in prison, but in the
10 community where the issues that you're talking about, the
11 very legitimate issues, become absolutely real, and they
12 become harder in treatment, and that will be the most
13 important treatment experience that he has.

14 Q. So let's look at No. 1 then, one of his other goals was
15 not being alone anymore and locked in his home looking at a
16 computer, and you testified earlier that Mr. Carta spent a
17 great deal of time looking at child pornography, right?

18 A. Yes.

19 Q. Now, did you see any evidence in the record that
20 Mr. Carta learned anything during his seven months in
21 treatment that would enable him to achieve this goal of not
22 being alone anymore, locked up anymore, looking at his
23 computer?

24 A. Counsel, I think that there's a certain naivete there;
25 that this is part of how you construct the very best

1 aftercare plan for him; that this should not be left
2 entirely up to Mr. Carta to decide how he's going to
3 socialize. It's part of his whole treatment plan, part of
4 his supervision, and built into that are orchestrated,
5 structured activities that provide him that kind of social
6 life, should all be built in, so it shouldn't be left up to
7 him to do that.

8 Q. Dr. Prentky, I'm not focusing on Mr. Carta's release
9 plan; I'm focused exclusively on what he may or may not
10 have learned during the seven months of treatment that he
11 had throughout his eight years in prison.

12 So my question is, do you see any evidence in the record
13 that he learned anything, gained any skills, learned any
14 techniques, to achieve, in treatment to achieve this goal of
15 not being on his computer, looking at child pornography for
16 hours on end?

17 A. I tried to answer your question. I guess what I meant
18 was that I don't know that there's anything that you can
19 learn in treatment other than in principle that it's sad to
20 be lonely; it's sad to be isolated, it's sad to be alone;
21 it's better to be out and be socialized. You can learn
22 that in principle, and, apparently, he gave that as a goal,
23 but until he's outside, until this becomes actualized,
24 until it's real, I'm not sure that there's anything that
25 he could learn in treatment that would facilitate that

1 happening.

2 Q. So, Dr. Prentky, have you treated sex offenders before?

3 A. Yes.

4 Q. And, generally, seven to eight months, which is the
5 amount of time Mr. Carta was in treatment, that's not
6 sufficient for someone to complete treatment, is it?

7 THE COURT: I think we need to -- when you finish
8 answering this question, we need to talk.

9 A. I'm not sure what complete treatment means. I don't
10 want to avoid your question. Generally, sex offenders are
11 in treatment for much longer than six or seven or eight
12 months, but he could be in treatment for the rest of his
13 life in the community.

14 The question really isn't so much the length of time; I
15 think it's really the context of treatment that would be
16 important.

17 THE COURT: So how much longer do you have?

18 MS. SERAFYN: Under an hour.

19 THE COURT: Well, we're not going to stay here until
20 6; that's for sure so I don't know what to do. When are we
21 meeting again?

22 MR. GOLD: The schedule right now, your Honor, is
23 Mr. Carta intends to testify on Monday, and we have a second
24 expert who's scheduled to testify on Monday and Tuesday,
25 and it should be completed. Dr. Prentky's schedule is he's

1 regularly available on Thursday and Fridays; he teaches
2 those first three days of every week.

3 THE COURT: Next Thursday and Friday are not doable
4 for me so we'll have to -- there's a chance that I could --
5 I cannot do it on Friday -- Thursday at all but I could
6 possibly do it -- I don't know if I can do it Thursday and
7 Friday, or in the morning. I definitely can't do it Friday
8 afternoon; I'll just have to get back to you because we're
9 right now blocked off. Whether I can have an hour first
10 thing in the morning, I don't know, possibly, and I'll let
11 you know on Monday. Do you want to potentially put it in
12 for either Thursday or Friday morning? Well, how much
13 redirect will you have?

14 MR. GOLD: Pretty limited, but I've got a humdinger
15 that I just want to make sure I get in, but probably half an
16 hour or so or 20 minutes.

17 THE COURT: Well, here's the issue: Thursday my
18 mother's going in for surgery, so I don't know exactly what
19 time it is and I'm supposed -- I got to be there. So if
20 it's an hour and if it's sort of going in later in the
21 morning, I could come in quick and then go take her but I
22 don't want to come back a second time; that's my issue, and
23 so for whatever reason this is taking a lot longer than
24 either of you predicted. We started at 10; I'm not sure why
25 we did that. I think it had something to do with someone's

1 schedule; I don't know what to say, so at this point I will
2 let you know on Monday what my situation is.

3 MR. GOLD: Very good. I'm sorry, where are we with
4 the Friday morning? It's in-depth, but we'll learn on
5 Monday?

6 THE COURT: You'll learn on Monday, all right? So
7 just keep those times open, I will figure it out, but I need
8 to know timing. You think it would be, I would just ask,
9 an hour, and I cut you off in an hour, and a half an hour,
10 and I would cut you off at half an hour because I have all
11 this stuff going on. I had pretty much been told it was
12 definitely going to finish today; that's why I could let it
13 start at 10:00 in the morning. It didn't happen, so on
14 Monday what's the situation?

15 MR. GOLD: Monday we have the rest of the case.
16 We're going to suspend with Dr. Prentky. We'll put on Todd
17 Carta who's going to testify, and then Dr. Bard.

18 THE COURT: Well, how much time do we have for
19 putting them on?

20 MR. GOLD: I think we have eight hours over the two
21 days.

22 THE COURT: No, it's not all day, I have an
23 evidentiary hearing on at 3.

24 MR. GOLD: No, I meant over the two days.

25 MS. SERAFYN: That's my understanding, 9 to 1 on

1 Monday.

2 THE COURT: Oh, okay, that's fine. Monday and
3 Tuesday 9 to 1, I mean, and then when's your witness coming?
4 The court-appointed expert, when he is coming?

5 MR. GOLD: He's coming on Monday and then
6 Mr. Carta --

7 THE COURT: Mr. Carta is not going to be done in the
8 morning. Do you think so?

9 MR. GOLD: In four hours I had anticipated.

10 THE COURT: You guys aren't having much credibility
11 on time limits.

12 MR. GOLD: I guess we don't, but I had anticipated
13 trying to make Mr. Carta's testimony focused to the points
14 that the Court has to decide but --

15 THE COURT: Wait a second. You can step down. I'm
16 sorry. When is Dr. Bard coming?

17 MR. GOLD: Dr. Bard is going to watch Mr. Carta's
18 testimony or that's my intention.

19 THE COURT: I don't want to pay for that. That's
20 crazy at those kinds of rates. Aren't you ordering
21 transcripts anyway?

22 MR. GOLD: Well, the notion was that Dr. Bard could
23 as part of the diagnostic evaluation --

24 THE COURT: Hasn't he already met with him?

25 MR. GOLD: Yes, he has.

1 THE COURT: No, no, no. I'm not going to pay for
2 that. If you want a transcript, fine.

3 MR. GOLD: No, but the idea is he was available to
4 testify on Monday, starting Monday we will complete
5 Mr. Carta.

6 THE COURT: Well, why don't we do Bard first since
7 it's impossible to get the experts in. It's taken us four
8 months to get him in here. I tried so hard in October,
9 November, December; it didn't happen. To lose all of you
10 again, it's easy to get Mr. Carta in; let's do Dr. Bard
11 first, he's already talked to him.

12 MS. PIEMONTE-STACEY: And then this Court has two
13 dates scheduled the following week, Monday and Tuesday, and
14 Mr. Carta could come back then, your Honor.

15 MR. GOLD: I didn't want Mr. Carta to go last,
16 Judge, to be candid. I wanted him to go before the expert.

17 THE COURT: Well, I'm not going to pay for Bard to
18 sit here for two days. That's not happening ... so if you
19 want -- so as far as I'm concerned, if Dr. Bard is scheduled?

20 MR. GOLD: Well, your Honor, I think this might be
21 something we've done in another case, I mean, we could pay
22 him for those two hours.

23 THE COURT: It's not going to be two hours. How
24 long do you think you're going to be on direct?

25 MR. GOLD: I think I'm going to be an hour with

1 Mr. Carta.

2 THE COURT: How long do you think you're going to be
3 on cross?

4 MS. PIEMONTE-STACEY: Your Honor, it wouldn't be a
5 couple hours; Dr. Bard has --

6 THE COURT: I'm talking about Carta.

7 MS. PIEMONTE-STACEY: Oh, sorry.

8 THE COURT: Now, to the extent this is credible,
9 which I can't make credibility assessments anymore, then
10 Bard would start around 11:30?

11 MR. GOLD: Right.

12 THE COURT: And then how long would he take
13 because --

14 MR. GOLD: Well, he goes into the next day.

15 THE COURT: Because Dr. Prentky was on the stand for
16 how long today, about six hours, and we're not done.

17 MR. GOLD: I believe it was five.

18 THE COURT: I'll give you five. Are you going to
19 have as much? I mean, he's the court-appointed expert. I
20 mean, he's the guy at this point who's sort of neutral.

21 MR. GOLD: But Dr. Bard testified before, and so we
22 have part of the record here established and --

23 THE COURT: Have you given me that transcript?

24 MR. GOLD: Yeah.

25 THE COURT: Well, I mean, do I have it?

1 MR. GOLD: It's on the docket.

2 MS. PIEMONTE-STACEY: Your Honor, I have an extra
3 copy; I'd be happy to give you both days of testimony, and
4 it's just Dr. Bard.

5 THE COURT: Good, so we just won't redo the whole
6 thing; I can live with that.

7 MR. GOLD: Right, it will be very focused.

8 THE COURT: So give me the testimony, we'll put it
9 in the record, and we'll take that as at least shortening
10 this thing. No qualifications.

11 MR. GOLD: No qualifications, I promise. When we
12 talk about the -- I think the parties anticipate that we've
13 got free reign with respect to the record in the prior
14 trial.

15 THE COURT: Maybe, but no, I don't know it; I just
16 simply know -- how many days, this has been?

17 MR. GOLD: There's only three days.

18 THE COURT: I know, but how many days -- I mean, we
19 already had this trial. How long did we have?

20 MR. GOLD: This is Day VI.

21 THE COURT: Day VI, that's huge, given the fact
22 there was a full other trial.

23 MR. GOLD: No, there was three days in the prior
24 trial and this would be Day VI.

25 THE COURT: This would be Day IV, no?

1 MS. PIEMONTE-STACEY: Tomorrow would be Day IV. So
2 since the remand we've had two days of testimony, both of
3 those days with Dr. Phenix; today was Day III and then
4 Monday would be Day IV.

5 THE COURT: Well, let me put it this way: you've
6 got the days that she committed. If this keeps gets pushed
7 off, my time is extremely constrained right now, the experts'
8 time; this could kick over into the summer, I mean, if we
9 don't finish next week, just everybody's got to have that
10 in terms of getting everyone in the front door. That's
11 what the situation is, and I know Mr. Carta's been in jail
12 a long time, and I know I threw this little -- gave this
13 little speech in October, November, December; it didn't
14 help me at all.

15 Mr. Carta canceled the hearings the last time. Why, I
16 still don't necessarily buy it, but he said he was in such
17 back pain that he couldn't concentrate so I deferred, but
18 it's very frustrating. So whatever happens, it just got
19 kicked over and kicked over and kicked over, and I want to
20 finish this. So I can't limit the amount of time with
21 Mr. Carta, I mean, that's like a due process thing; he's
22 the defendant here.

23 MR. GOLD: That's right, Judge. What I'd like to do
24 is discuss this with Mr. Carta over the weekend --

25 THE COURT: Yes.

1 MR. GOLD: -- because he's going to be locally
2 housed I hope; I think is he at Wyatt, yeah, and I'd like to
3 confer with Dr. Bard.

4 What I would propose is still I think it would be
5 helpful to the Court frankly if the court-appointed examiner
6 was there for at least a portion of the direct testimony.

7 THE COURT: I'm not going to pay for it. It's too
8 expensive.

9 MR. GOLD: I want to propose --

10 THE COURT: If you want to pay for it, that's your
11 call.

12 MR. GOLD: That's our call but I just wanted to
13 alert the Court.

14 THE COURT: Of course, you could let him read the
15 transcripts, and he's met with this guy forever, but the
16 one thing I'm not going to allow, given the track record
17 here, is to lose Dr. Bard from the schedule. It will take
18 us months again, and I don't care what sequence happens ...
19 so if he can't make it that following Monday and Tuesday, I
20 want Bard first; I can always find time for Mr. Carta.

21 MR. GOLD: Okay.

22 THE COURT: The sequence may matter hugely for a
23 jury; it matters less hugely for me, so that's the one
24 constraint I'm going to put. I don't want to lose Bard
25 over the next period of time, and right now I don't really

1 trust the time evaluations. I'm not going to cut you off on
2 Mr. Carta; I mean, it's his liberty at stake.

3 MR. GOLD: Right, so we're going to, with this
4 information, Judge, we'll tailor the presentation; we'll
5 figure it out. I think, I mean, I still don't want to
6 comment, but I'm going to speak with Mr. Bard -- Dr. Bard
7 about his availability.

8 THE COURT: That's perfect. If he's available, I'm
9 willing to be flexible on sequence; but if not, I can't lose
10 him. It's taken us too long. With Dr. Prentky, we only have
11 another hour-and-a-half, so we can find some time to squeeze
12 that in. Okay, perfect, so have a good weekend.

13 MS. SERAFYN: Your Honor, we just don't think it's a
14 pure money issue with Dr. Bard; we actually believe that the
15 witnesses should be sequestered.

16 THE COURT: No way. He's a psychiatrist; he's used
17 to looking at credibility, no, no, no, no.

18 MS. SERAFYN: Your Honor, I think the practice in
19 these cases has been to sequester the witnesses.

20 THE COURT: He's my court-appointed expert. It's not
21 a sequestration issue; it's a money issue. It's not worth
22 the money in terms of two full days or a full day of
23 testimony at the rates that they're being charged; but if
24 his office wants to pay, that's fine.

25 MS. PIEMONTE-STACEY: Your Honor, in terms of the

1 transcripts, do you want this formally submitted as another
2 exhibit or just note the record --

3 THE COURT: Just show her where it is so I can read
4 it.

5 MS. PIEMONTE: Okay, that's fine.

6 THE CLERK: All rise.

7 THE COURT: All right. Thank you.

8 (Whereupon, the proceedings concluded at 5:15 p.m.)
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C E R T I F I C A T E

I, Helana E. Kline, a Registered Merit Reporter,
Certified Realtime Reporter, and Federal Official Court
Reporter of the United States District Court, do hereby
certify that the foregoing transcript, from Page 1 to
Page 164, constitutes, to the best of my skill and ability,
a true and accurate transcription of my stenotype notes
taken in the matter of the United States of America v.
Todd Carta.

/s/ Helana E. Kline

April 4, 2011

Helana E. Kline, RMR, CRR

Federal Official Court Reporter